



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

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**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

*Work-Product*

**DOCKET NUMBER:** BC-2021-02824

**COUNSEL:** NONE

**HEARING REQUESTED:** YES

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**APPLICANT'S REQUEST**

1. He be given a military retirement for the time served.
2. His records be reviewed for disability for chronic obstructive pulmonary disease (COPD).
3. His records be reviewed for periodontal disease.
4. His retirement be reviewed for date of separation.
5. He be recouped the severance pay that was seized before he could receive disability pay.

**APPLICANT'S CONTENTIONS**

He was separated from active duty on 14 Oct 83 without cause after having served over 10 years of continuous distinguished service. His enlistment was not due for expiration until 15 Jan 86. This came about when he had successfully completed 45 days of inpatient treatment at the Naval hospital for alcoholism. The action denied him to continue a career that would have ultimately led to a retirement. He is currently being treated at the Department of Veterans Affairs (DVA) for post-traumatic stress disorder (PTSD) which spiked at the time of his separation. He now has chronic obstructive pulmonary disease (COPD). He did not smoke prior to entering the service. His job as a recruiter during the end of the Vietnam War put a strain on performing the job successfully.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

The applicant is a former Air Force Reserve master sergeant (E-7).

On 15 Mar 70, according to DD Form 13, *Statement of Service*, the applicant enlisted in the Air Force Reserve.

On 1 Oct 80, according to Special Order *Work-Prod...* dated 29 Aug 80, the applicant was ordered to extended active duty (voluntary) through 30 Sep 84, unless sooner relieved, and assigned to a Reserve recruiting squadron in New Jersey.

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Controlled by: SAF/MRB  
CUI Categories: SP-MIL/SP-PRVCY  
Limited Dissemination Control: N/A  
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On 1 Jul 83, according to Special Order Work-P..., dated 1 Jun 83, the applicant was continued on extended active duty (voluntary) through 30 Sep 84, unless sooner relieved, and reassigned to a Reserve recruiting squadron in New York.

On 14 Oct 83, the applicant was issued a DD Form 214, *Certificate of Release or Discharge from Active Duty*, for the period 1 Oct 80 to 14 Oct 83 with time lost 18 Jul 83 - 19 Jul 83 and 25 Jul 83. He received an honorable discharge with narrative reason for separation of "USAFR Release from Active Duty Completion of Required Service," separation pay of \$17,491.32, and transferred back to the Air Force Reserve.

On 13 Sep 10, according to a letter from the Air Reserve Personnel Center (ARPC), provided by the applicant, he was notified he did not qualify for retired pay benefits at that time or in the future. Specifically, a review of his master personnel record indicated he was discharged as of 3 Jan 92. He had completed 21 years, 9 months and 18 days of honorable federal service; however, only 16 years of this time was considered satisfactory service. A minimum of 20 years of satisfactory service was required to be qualify for retired pay and benefits.

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

**APPLICABLE AUTHORITY/GUIDANCE**

10 United States Code (U.S.C.) 12731b, Special rule for members with physical disabilities not incurred in the line of duty. In the case of a member of the Selected Reserve of a reserve component who no longer meets the qualifications for membership in the Selected Reserve solely because the member is unfit because of physical disability, the Secretary concerned may determine to treat the member as having met the service requirements if the member has completed at least 15, and less than 20, years of service.

On 25 Jul 18, the Under Secretary of Defense 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 paragraphs 6 and 7 of the Wilkie memorandum.

On 27 Sep 22, the Board staff provided the applicant a copy of the Wilkie memorandum (Exhibit E).

**AIR FORCE EVALUATION**

The AFBCMR Medical Advisor completed a review of all available records and finds insufficient evidence to support the applicant's request. The medical advisor opines and recommends to the Board that in the absence of medical documentation coupled with uncertain personnel issues does indeed parallels not supporting the applicant's medical concerns and disability recoupment of prior severance pay. The burden of proof is placed on the applicant to submit accurate and compelling

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evidence to support all of his requests. The evidence he did submit was insufficient to support a favorable change in his requests related to the expertise of the medical advisor.

First, the applicant's request he be given a retirement for the time he served; the medical advisor refers to the letter, dated 13 Sep 10, from ARPC indicating the applicant did "not qualify for retired pay benefits now or in the future."

Second, in addressing the applicant's concern for a disability for having COPD, the only pulmonary testing done pertaining to the lungs was spirometry (lung function tests) performed in 2013 which revealed normal lung volumes with evidence of severe diffusion impairment (not a component of bronchitis, chronic bronchitis nor emphysema...[COPD]. Additionally, his claim of being diagnosed with bronchitis while serving was not found in the medical evidence provided or reviewed. It is well known within the medical arena that "*chronic* bronchitis and emphysema often occur together" and make up the term of COPD. There was no evidence of the applicant being diagnosed with a bronchitic condition either acutely or of a chronic nature. However, for years the applicant smoked cigarettes and frequently was counseled on reducing and stopping such behavior. Long-term smoking ...a highly likelihood of developing any sort of lung condition, especially COPD. Last, the applicant himself noted having COPD as a result of dust, concrete and sheet rock from working at Home Depot, but in that same year (2014) COPD was listed as one of the diagnoses with the caveat of it being "mild requiring no treatment." Four years later, in 2018, an improved COPD condition was additionally noted as being asymptomatic (having no symptoms) and requiring no medication. The condition did not keep the applicant from performing the duties of his office, grade, rank, or rating and therefore, was not an unfitting condition and thus not eligible for processing via the Disability Evaluation System (DES).

Third, the medical advisor saw no evidence of dental issues among the reviewed records. Therefore, no further comment can be accurately and truthfully stated.

Fourth, the applicant's request his retirement be reviewed for date of separation, the master personnel file notes the time of separation in conjunction and calculation of satisfactory years of service. Any further review specific to this concern should be sought through the office of primary responsibility, most likely personnel management.

Lastly, with regard to the applicant's request that he recoup severance pay; pursuant to DoD 7000.14-R, *Financial Management Regulation*, Volume 7B, Chapter 4, Section 10.2, paragraphs 10.2.1 which clearly states "In some cases, members entitled to disability retired pay will also qualify for the DVA disability compensation. In such cases, the amount deducted to recoup the separation payment by the DVA will reduce the gross amount of separation, severance or readjustment pay to be recouped by DOD." Additionally, in paragraph 10.4.3, "the DFAS will provide written notification to members subject to recoupment. The DFAS sends this notice 90 days in advance of the initial collection from the member's retired pay. The written notification will provide the current outstanding balance and the proposed monthly recoupment amount and explain the options of a more lenient repayment request if the member asserts that the maximum rate of recoupment imposes a financial hardship. The written notification will also explain the requirement for concurrent recoupment of the separation or non-disability severance pay by both the DFAS and the DVA." This is DoD policy with the DVA and answers the applicant's question of why his one-time severance pay was recouped.

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 1 Sep 22 for comment (Exhibit D) but has received no response.

#### **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 a medical discharge/retirement for his mental health condition. His service treatment records were not available for review and the applicant also did not submit them and thus, besides his personal testimony, there was no actual documentation that he had PTSD, alcohol issues, or any other mental health conditions during service. He did not discuss the traumatic experience he had endured during military service that caused him to develop PTSD and no evidence his PTSD spiked at the time of separation as contended. There was no evidence his mental health condition impaired his ability to function in a military setting and no evidence he had any unfitting mental health conditions that would lead to early career termination. There were no records he was placed on a duty limiting condition profile for his mental health condition, he was never deemed not worldwide qualified due to his mental health condition, and no records from his leadership of any observations or suspicions his mental health condition had interfered with his ability to reasonably perform his military duties in accordance with his office, grade, rank, or rating.

For awareness since the applicant has been receiving disability compensation from the DVA, 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 the "snapshot" 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.

Liberal consideration is applied to the applicant's petition due to the contention of a mental health condition. The following are responses to the four questions from the Kurta memorandum based on information presented in the records:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge? The applicant contends his PTSD spiked at the time of his separation and he had relapsed causing him to be admitted three times for rehabilitation treatment for alcohol issues during his civilian employment. He believes his separation from active duty service was a direct result of his mental health condition.

2. Did the condition exist or experience occur during military service? The applicant's service treatment records were not available for review and so there is no evidence he had PTSD or alcohol issues or received mental health treatment during military service. A diagnosis of PTSD was added to his DVA records in 1997 and no rationale or clarifying information was provided for how he met diagnostic criteria for this condition, if this condition was developed during service, or how this condition affected his functioning during service. He began to receive regular mental health treatment/medication management services from the DVA in 2012, several years post-discharge, for anxiety and depression caused by his post-service stressors.

3. Does the condition or experience excuse or mitigate the discharge? There is no evidence the had any unfitting mental health condition that would meet criteria to be referred to the Medical Evaluation Board for a medical discharge/retirement. There is also no evidence his mental health condition had a direct impact to his discharge. His mental health condition does not excuse or mitigate his discharge.

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

The complete advisory opinion is at Exhibit F.

### **APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 12 Oct 22 for comment (Exhibit G) but has received no response.

### **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 Medical Advisor and AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board finds the applicant's medical conditions are not warranted to process through the DES as a matter of equity or good conscience IAW DoDI 1332.18, *Disability Evaluation System*, Appendix 1 to Enclosure 3, paragraph 4. Specifically, his mental health condition, COPD, or periodontal disease were not a medical basis for career termination nor entry into the DES for consideration of a disability discharge.

Regarding the applicant's request he be granted a military retirement for time served. There is no evidence the applicant served a minimum of 20 years of satisfactory service to qualify for retired pay and benefits. The applicant also was not eligible under 10 U.S.C. 12731b, because he was never deemed as unfit due to a physical disability. Therefore, the Board finds no error with his date of separation for retirement purposes.

Liberal consideration does not apply to the applicant's request since the guidance only pertains to discharge upgrades; however, based on the applicant's PTSD, the Board applied fundamental fairness to his request in accordance with the Wilkie memorandum, dated 25 Jul 18, specifically paragraph 6.h., and considered relief on equitable, injustice, or clemency grounds whenever there is insufficient evidence to warrant relief for an error or impropriety. Nevertheless, the Board does not find his PTSD warrants the requested corrections to his records. Therefore, the Board recommends against correcting the applicant's record.

Regarding the applicant's request he be recouped the severance pay that was seized before he could receive disability pay, this request falls outside the purview of the AFBCMRs authority and is a DoD policy with the DVA. Therefore, there is no authority for the Board, acting on behalf of the Secretary of the Air Force, to provide recoupment of his severance pay.

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 Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2021-02824 in Executive Session on 30 Nov 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 3 Aug 21.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFBCMR Medical Advisor, dated 30 Aug 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 27 Sep 22.
- Exhibit E: Letter, SAF/MRBC, w/atchs (Supplemental Guidance), dated 23 Dec 21.
- Exhibit F: Advisory Opinion, AFRBA Psychological Advisor, dated 3 Oct 22.
- Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 12 Oct 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.

12/2/2023

X **Work-Product**

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