



CUI//SP-MIL/SP-PRVCY

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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2022-00756

COUNSEL: NONE

HEARING REQUESTED: NOT INDICATED

APPLICANT'S REQUEST

His record be corrected to show he was placed on the Permanent Disability Retired List (PDRL) instead of being discharged without benefits.

APPLICANT'S CONTENTIONS

He made all attempts to verify his address changes so he could receive important information for his appointment dates while on the Temporary Duty Retired List (TDRL). He continues to have military related mental health disorders and has been going to appointments for the past seven years trying to battle them. He has been hospitalized for the same conditions post service. He should be permanently retired and receiving full benefits as he had been prior to his discharge.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force senior airman (E-4).

On 1 Apr 09, DD Form 4, *Enlistment/Reenlistment Document Armed Forces of the United States*, indicates the applicant 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 9 Nov 09 for a period of six years.

On 28 Sep 14, Special Order No. *Work-Product* dated 6 Aug 14, indicates the applicant was placed on the TDRL with a compensable percentage for physical disability of 50 percent.

On 4 Mar 16, AFPC/DPFDC Memorandum addressed to the applicant, indicates his eligibility to receive Air Force retired pay would be terminated because he failed to report for a scheduled medical evaluation.

On 24 Mar 16, AFPC/DPFDC Memorandum dated 4 Mar 16, addressed to DFAS-CL, requested the applicant's retired pay be suspended.

On 25 Oct 18, AFPC/DPFDC Memorandum, addressed to the applicant informed him that his five years on the TDRL was due to expire effective 27 Sep 19. Also, it stated he was being afforded a final opportunity to report and complete the examination that is required by law. Further, it stated if the applicant did not respond or desire to have a medical evaluation, officials within the Office

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of the Secretary of the Air Force would take action to finalize his case and would result in discharge without any of benefits, i.e., loss of his military identification (ID) card and his eligible family member's ID cards and associated retiree benefits. Finally, the memorandum reminded him that his eligibility to receive Air Force retired pay was terminated effective 24 Mar 16. However, if he reported for a medical evaluation and the Informal Physical Evaluation Board (IPEB) accepts the information provided, AFPC/DPFDC would request that his retired pay be reinstated to be effective the date he was medically evaluated.

On 27 Sep 19, Special Order No. [REDACTED] *Work-Product* dated 12 Sep 19, indicates the applicant was removed from the TDRL and discharged without benefits for having failed to report to scheduled physical examination as required by law.

On 15 Apr 22, a DVA Appeal decision, provided by the applicant determined he was entitled to a 70 percent disability rating, but not higher, for major depressive disorder with eating disorder, and attention deficit hyperactivity disorder with anxiety and insomnia for the appeal period prior to 21 Dec 21, is granted.

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

AIR FORCE EVALUATION

AFPC/DPFDC recommends denying the application. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice occurred during the processing of his medical case. The applicant was found unfit by the IPEB on 03 Jun 14 for Major Depressive Disorder (MDD). On 30 Jul 14, the applicant completed and acknowledged the TDRL Statement Memo. He was placed on TDRL with a disability rating of 50 percent effective 28 Sep 14 and fell under a 5-year panel that only allows the member to be on TDRL until 27 Sep 19. Every attempt was made to reach out to the applicant throughout the 5 years. At no time was updated contact information received, per statement memo. On 18 Nov 15 a request through MyPers was sent to the applicant's email requesting updated contact information; no response. On 01 Dec 15, a second request was sent to the applicant requesting updated contact information; no response. On 03 Feb 16, a last chance letter was mailed using the address provided by the applicant; no response. On 04 Mar 16, notification of Pay Termination action was sent to the applicant by email and address located in Defense Enrollment Eligibility Reporting System (DEERS) system: no response. On 25 Oct 18, a 12-month letter was emailed to the applicant affording him a final opportunity to respond and complete the required examination that is required by law with a no later than suspense 25 Nov 18; no reply. On 27 Aug 19, a final check of the Veterans Benefits Management System (VBMS) was completed, no new Department of Veterans Affairs (VA) rating was found. Effective 27 Sep 19, the applicant was removed from TDRL and discharged without benefits. The applicant states, "I believe an error and injustice, due to me making all attempts to verify my address changes." However, no evidence was provided of any attempts that were made by the applicant.

The complete advisory opinion is at Exhibit C.

The AFRBA Psychological Advisor finds insufficient evidence has been presented to indicate his mental health condition had impaired his ability to complete his TDRL periodic examination as he had agreed upon and acknowledged prior to entering the TDRL that ultimately resulted with his discharge without benefits. The applicant contends he had attempted to change his address several times but was unsuccessful causing him to not receive the TDRL periodic examination that he had signed and agreed to do before he entered TDRL. The applicant had five years, which was more than ample amount of time, to resolve his situation. There were periodic instances during the TDRL period when his symptoms would exacerbate possibly causing him to have impaired judgment, low mood and energy, and poor concentration and memory that may affect his ability to initiate or follow through completing the periodic examination, but he was not reported to have been in this persistent mental state. There were numerous periods in which he was determined to be stable, and his mental status was clear prior to and after hospitalization as evidenced by his ability to attend and complete school, completed certification related to auto repair/mechanic, attend school and work simultaneously, be gainfully employed, raise his child, and support his family. There was no evidence his mental health condition caused any delays or hindered his ability to complete the TDRL periodic examination within the allotted maximum five years on TDRL. Should the Board overlook this issue, the Psychological Advisor finds that in lieu of an official TDRL periodic examination, the final disposition of this applicant's case would be based on his treatment records during TDRL: He would enter the TDRL with a 50 percent rating for MDD, Veterans Affairs Schedule for Rating Disabilities (VASRD) Code 9434 effective 28 Sep 14 and be removed from the TDRL and discharged with a reduced rating of 10 percent (severance pay) for MDD, VASRD Code 9434 effective 27 Sep 19. This decision is at the Board's discretion.

The Board may consider applying liberal consideration to the applicant's request due to the contention of a mental health condition. The following are answers to the four questions in the policy from the available records for review:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
The applicant is requesting to receive full benefits because he was discharged without benefits. He claims there was an error and injustice with his discharge as he had made several attempts to verify his change of address to receive important information about his appointments for his current disabilities that he had been battling for years. He did not specify his disabilities, but his submitted records reflected he had been treated for MDD, attention deficit hyperactivity disorder (ADHD), anxiety disorder, unspecified mood/bipolar disorder, posttraumatic stress disorder (PTSD), adjustment disorder, and alcohol abuse during TDRL. He was discharged without benefits because he failed to show to his TDRL periodic examination.

2. Did the condition exist or experience occur during military service?
The applicant's records specified he was placed on the TDRL for the unfitting condition of MDD with a 50 percent rating effective 28 Sep 14 and was removed from the TDRL and discharged without benefits effective 27 Sep 19.

3. Does the condition or experience excuse or mitigate the discharge?
The applicant was discharged from service for having an unfitting mental health condition of MDD. A review of his available and submitted treatment records during the TDRL period reflected he had some fluctuations and exacerbations of his mental health symptoms but nevertheless, was able to achieve stability and his mental health condition was assessed to have mild or transient impairment to his overall functioning by the end of the TDRL period. The level of impairment to his overall functioning around this time frame was consistent with a 10% rating based on the VARSD guidelines in lieu of an official TDRL re-evaluation. The applicant was discharged without benefits for his unfitting mental health condition because he failed to report to his required TDRL periodic examination. There was no evidence his mental health condition had impaired or hindered his ability to complete his TDRL periodic examination within the allotted five-year TDRL period and so his mental health condition or experience does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?
Since there was no evidence his mental health condition or experience may excuse or mitigate his discharge, his condition or experience also does not outweigh his discharge.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinions to the applicant on 6 Sep 22 for comment (Exhibit E), and the applicant replied on 20 Sep 22. In further support of his request, the applicant submitted a VA Rating Decision Memo dated 13 Jan 22, the Board of Veterans' Appeal decision dated 15 Apr 22, a Mental Disorders Disability Benefits Questionnaire and a VA Behavioral Health Exams Individual Unemployability Statement dated 28 Dec 21.

The applicant's complete response is at Exhibit F.

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 recommendation of AFPC/DPFDC and the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant was placed on TDRL, and numerous attempts were made to contact him to ensure he complied with the requirements and his obligations while on the TDRL. The applicant was discharged without benefits for his unfitting mental health condition because he failed to report to his required TDRL periodic examination. Liberal consideration was applied to the applicant's request due to the contention of a mental health condition; however, there was no evidence his mental health condition had impaired or hindered his ability to complete his TDRL periodic examination within the allotted five-year TDRL period and so his mental health condition or experience does not excuse or mitigate his discharge. Therefore, the Board recommends against correcting the applicant's record.

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-2022-00756 in Executive Session on 30 Nov 22 and 14 Dec 22:

-  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 Jan 22.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPFDC, dated 17 May 22.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 4 Aug 22.
- Exhibit E: Notification of Advisories, SAF/MRBC to Applicant, dated 6 Sep 22.
- Exhibit F: Applicant's Response, dated 20 Sep 22, w/atchs.
- Exhibit G: Letter, SAF/MRBC, w/atch (Liberal Consideration Guidance), dated 11 Nov 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.

7/31/2023



Board Operations Manager, AFBCMR
Signed by: USAF