



*Work-Product*

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

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**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-00990

*Work-Product*

**COUNSEL:** NONE

**HEARING REQUESTED:** YES

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**APPLICANT'S REQUEST**

His honorable discharge be changed to a medical retirement.

**APPLICANT'S CONTENTIONS**

He started his Department of Veterans Affairs (DVA) claim six months before separating and the first time he was rated at 100 percent permanent and total.

The applicant provided a copy of a DVA rating decision, dated 23 Nov 21, reflecting he was granted service-connection for post-traumatic stress disorder (PTSD) with 50 percent disability rating, obstructive sleep apnea with 50 percent disability rating, lumbosacral strain with 40 percent disability rating, fibroelastoma of the aortic valve with 30 percent disability rating, right shoulder strain with 20 percent disability rating, chronic left and right ankle sprains with 10 percent disability rating each, right knee strain with 10 percent disability rating, left hip trochanteric pain syndrome with 10 percent disability rating, right lower extremity radiculopathy with 10 percent disability rating, tinnitus with 10 percent disability rating, and multiple other conditions rated at zero percent disability, effective 30 Sep 21.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

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

On 29 Sep 21, the applicant received an honorable discharge with narrative reason for separation of "Miscellaneous – General Reasons." He was credited with 5 years, 1 month, and 21 days of total active service.

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

**APPLICABLE AUTHORITY/GUIDANCE**

The Department of Defense (DoD) and the Department of Veterans Affairs (DVA) disability evaluation systems operate under two separate laws. Under Title 10, United States Code, Physical Evaluation Boards must determine if a member's condition renders them unfit for continued military service relating to their office, grade, rank or rating. The fact that a person may have a

**AFBCMR Docket Number BC-2022-00990**

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medical condition does not mean the condition is unfitting for continued military service. To be unfitting, the condition must be such that it alone precludes the member from fulfilling their military duties. If the board renders a finding of unfit, the law provides appropriate compensation due to the premature termination of their career. Further, it must be noted the AF disability boards must rate disabilities based on the member's condition at the time of evaluation, in essence a snapshot of their condition at that time. It is the charge of the DVA to pick up where the AF must, by law, leave off. Under Title 38, the DVA may rate any service-connected condition based upon future employability or reevaluate based on changes in the severity of a condition. This often results in different ratings by the two agencies.

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 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 paragraphs 6 and 7 of the Wilkie Memorandum.

On 9 Sep 22, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit E).

## **AIR FORCE EVALUATION**

The AFRBA Psychological Advisor completed a review of all available records and finds sufficient evidence to partially support the applicant's request based on an identifiable error and injustice with his discharge. The applicant was diagnosed and treated for PTSD caused by his deployment experiences to Poland during military service. He had significant difficulties managing his symptoms during service necessitating a higher level of care and being placed on duty restrictions and do not arm (DNA) status. He was initially recommended to attend inpatient treatment due to the exacerbation of his symptoms but was not compliant with this recommendation because he did not want to leave his wife and dog despite the urging of his mental health care providers. He did finally agree and attended intensive outpatient (IOP) treatment. He made some improvements from IOP, but the improvements were not sustained when he returned to his home base. His PTSD symptoms continued to persist, and he began to have suicidal ideations from the side effects of his psychotropic medication (Effexor) and marital stressors, affecting his ability to satisfactorily perform his job and impairing his overall functioning. The applicant was placed on a duty restriction profile, which included no deployments/not worldwide qualified, temporary duty (TDY) and permanent change of station (PCS), and DNA status on 1 Oct 20 when he first reported to his PCM he had PTSD symptoms causing him to have paranoid and irrational thoughts. He was briefly removed from DNA status on 8 Oct 20 following an initial intake evaluation at the mental health clinic (MHC). He was placed back on duty restriction and DNA status again a couple of weeks later on 22 Oct 20 after being evaluated by a different provider at the MHC due to elevated risk and persistent maladaptive symptoms. He would remain on duty restrictions and DNA status from that time and until his discharge from service about a year later. After he returned from IOP, he was recommended to be permanently removed from his Air Force Specialty Code (AFSC) by his psychiatrist because of the frequency and severity of his symptoms. His leadership appeared to have concurred with this recommendation based on telephone consult (T-CON) note, dated 6 May 21 reporting, "The shirt concurred and related that he and command believe the patient is appropriate for removal of AFSC, given long term symptoms that have interfered with functioning, lack of progress, patient desire to get out of the Air Force, and loss of confidence by the CO." The applicant was reported to have voluntarily applied for an early separation because he no longer believed being in the Air Force was best for him, he continued to have difficulties at work, and difficulties managing his condition. There was a note from his psychiatrist reporting discussions about possibly referring him to the Medical Evaluation Board (MEB), but no follow-up was made. A couple of notes from his mental health provider (MHP) in Aug 21 reported he was going through the MEB process, but this appeared to be erroneous reporting because his termination treatment notes dated on 14 Sep 21 reported "neither MEB processing or administrative separation recommendation are warranted." He was separated from service because of his voluntary discharge request according to his medical records.

The Psychological Advisor opines the applicant should have been referred to the MEB for the potentially unfitting mental health condition of PTSD. His mental health condition clearly affected his ability to appropriately function in the military in that he had to be placed on duty restrictions and DNA status continuously for at least a year. He had tried at least three different treatment modalities (outpatient individual psychotherapy, medication management services, and IOP) and his condition did not achieve sustained remission or stability to be able to return to full duty without any duty restrictions. The applicant was no longer able to tolerate the stressor of the military environment and opted for a voluntary early separation. His mental health care providers never officially referred him to an MEB for unspecified reasons, even though it was known from his treatment notes he was not making any improvements with continued treatment. The

Psychological Advisor speculated that because he requested and was approved for a voluntary discharge, his providers did not have to initiate the medical discharge process. Hypothetically if the applicant did not submit a request for discharge, his mental health condition would continue to persist affecting his overall functioning as demonstrated in his post-service DVA treatment records within one year of discharge. His mental health care providers would have ultimately initiated his referral to the MEB for his potentially unfitting condition of PTSD.

To provide relief to the applicant, the Psychological Advisor recommends to the Board to place the applicant on the temporary disability retired list (TDRL) with a minimum rating of 50 percent for PTSD, Veterans Affairs Schedule for Rating Disabilities (VASRD) code 9411, and for the applicant to receive a TDRL re-evaluation before the three-year TDRL expiration date of 29 Sep 24. The results of the TDRL re-evaluation should be adjudicated by the Informal Physical Evaluation Board (IPEB) to determine appropriate disposition of his case to include but not limited to possible recommendation of placement on the permanent disability retired list (PDRL) with a final rating, remain on TDRL, or return to duty.

Liberal consideration is applied to the applicant's petition due to the contention of a mental health condition. The following are answers to the four questions from 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 is requesting to be medically retired. He submitted a DVA Rating Decision document, dated 23 Nov 21, granting him a 50 percent rating for PTSD effective on 30 Sep 21.

2. Did the condition exist or experience occur during military service? There is evidence the applicant was diagnosed and was treated with PTSD caused by his deployment experiences to Poland during service. He had received outpatient and Intensive Outpatient treatment for this condition during service. The applicant was deployed to Poland from 20 Oct 18 to 19 Apr 19.

3. Does the condition or experience excuse or mitigate the discharge? The applicant was placed on duty restrictions and DNA status continuously for at least a year because of the persistency and severity of his PTSD condition and symptoms to include having suicidal thoughts. He was recommended to be permanently removed from his AFSC by his mental health care providers and was concurred by his leadership because he was unable to perform the duties of his office, grade, rank, or rating and no improvements made to his condition. The applicant was reported to have requested a voluntary early separation discharge because he no longer was able to tolerate the rigors of the military environment and believed it would not be best for him to stay in the Air Force. These cumulative factors indicated the applicant's mental health condition of PTSD had elevated to potentially unfitting and he should have been referred to the MEB for medical discharge processing. He was never referred to the MEB, and this signifies there is an error and injustice with his discharge. Therefore, his mental health condition excuses and mitigates his discharge.

4. Does the condition or experience outweigh the discharge? The applicant should have been referred to the MEB for having an unfitting mental health condition of PTSD for a medical discharge. His mental health condition resulting with a medical discharge would outweigh his original administrative discharge.

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 25 Aug 22 for comment (Exhibit D) but has received no response.

### **ADDITIONAL AIR FORCE EVALUATION**

The AFBCMR Medical Advisor recommends inclusion, as static ratings, of a 40 percent disability rating for the applicant's back condition and a 10 percent disability rating for his right knee condition in the final combined disability rating computation. The ratings for these conditions are not eligible for change, increase or decrease, although combined with the 50 percent disability rating for which the applicant could be placed on the TDRL due to PTSD. Any new condition(s) diagnosed after placement on the TDRL cannot be considered in the service final disability rating and disposition, unless the new condition is the direct result of or secondary to the condition for which the applicant was placed on the TDRL, IAW 2014, 2018, and 2022 versions of DoD Instruction 1332.18, *Disability Evaluation System*.

In accordance with DoD Instruction 1332.18, in effect at the time of the applicant's discharge, in determining unfitness, a "service member shall be considered unfit when the evidence establishes that the member, due to physical disability, is unable to reasonably perform the duties of his or her office, grade, rank, or rating (hereafter called duties) to include duties during a remaining period of Reserve obligation." In the case under review, given the established treatment for the applicant's obstructive apnea, the minimal evidence of a recalcitrant chronic duty-impairing hip condition, the lack of objective service evidence of a duty impairing radiculopathy, representing compression or inflammation of a specific nerve root, e.g., either on examination, electrodiagnostic study, or magnetic resonance imaging scan, the absence of objective evidence of a duty-impairing bilateral ankle condition, and the absence of duty-impairing tinnitus, the Medical Advisor did not find these conditions warranted a post-service unfit finding for inclusion in any post-service military disability computation.

The Medical Advisor also acknowledged the disability rating assigned by the DVA for the fibroelastoma of the aortic valve, which was based upon an interpretation of the applicant's symptoms in METS, or metabolic equivalents. However, given the absence of a cardiovascular basis for the applicant's chest symptoms, particularly with normal echocardiography and coronary angiography, and the benign nature of the aortic fibroelastoma, the medical advisor opines that an unfit finding for a heart or heart valve-related condition is not warranted. Accordingly, although the cardiologist recommended follow-up in one year, his cardiologist also recommended prescribing a proton-pump inhibitor to neutralize the adverse effects of acid reflux upon the applicant's stomach and lower esophagus; the prevailing diagnostic reason of his chest symptoms.

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 7 Dec 22 for comment (Exhibit G) but has received no response.

### **FINDINGS AND CONCLUSION**

1. The application was timely filed.
2. The applicant exhausted all other available administrative remedies before applying to the Board.

3. After reviewing all Exhibits, the Board concludes the applicant is the victim of an error or injustice. The Board concurs with the rationale and findings of the AFRBA Psychological Advisor and the AFBCMR Medical Advisor and finds a preponderance of the evidence substantiates the applicant's contentions in part. Specifically, there is sufficient evidence the applicant's PTSD, back condition and right knee condition were unfitting at the time of his discharge and in accordance with DoDI 1332.18, *Disability Evaluation System*, Appendix 1 to Enclosure 3, paragraph 4, he should have been referred to a MEB. However, the Board finds insufficient evidence that the remaining medical conditions service-connected and rated by the DVA to be unfitting at the time of his discharge. Subsequently, for the remainder of the applicant's request, the evidence presented did not demonstrate an error or injustice, and the Board therefore finds no basis to recommend granting that portion of the applicant's request. Therefore, the Board recommends correcting the applicant's records as indicated below.

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 pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show:

a. On 29 Sep 21, he was not discharged for "Miscellaneous – General Reasons," but on 28 Sep 21, he was found unfit to perform the duties of his office, rank, grade, or rating by reason of physical disability, incurred while he was entitled to receive basic pay; the diagnoses in his case were PTSD with disability rating of 50 percent under the Veterans Affairs Schedule for Rating Disabilities (VASRD) code 9411, lumbosacral strain with 40 percent disability rating under VASRD code 5237, and right knee sprain with disability rating of 10 percent under VASRD code 5099-5003, with an overall compensable percentage for physical disability of 70 percent; the degree of impairment was temporary; the disability was not due to intentional misconduct or willful neglect; the disability was not incurred during a period of unauthorized absence; and the disability was not a direct result of armed conflict or caused by an instrumentality of war and was not combat-related.

b. On 29 Sep 21, he was honorably discharged from active duty and on 30 Sep 21, his name was placed on the Temporary Disability Retired List (TDRL) with an overall compensable percentage for physical disability of 70 percent.

c. On 29 Sep 24, he was removed from the TDRL and transferred to the Permanent Disability Retired List with an overall compensable percentage for physical disability of 70 percent.

d. His election of the Survivor Benefit Plan option will be corrected as provided for by law or the Code of Federal Regulations.

However, regarding the remainder of the applicant's request, the Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the application will only be reconsidered upon receipt of relevant evidence not already considered by the Board.

### **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-2022-00990 in Executive Session on 23 Jan 23:

*Work-Product* [redacted], Panel Chair  
*Work-Product* [redacted], Panel Member  
*Work-Product* [redacted], Panel Member

All members voted to correct the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 7 Mar 22.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 22 Aug 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 25 Aug 22.
- Exhibit E: Letter, SAF/MRBC, w/atchs (Liberal Consideration Guidance), dated 9 Sep 22.
- Exhibit F: Advisory Opinion, BCMR Medical Advisor, dated 29 Nov 22.
- Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 7 Dec 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.

1/16/2026

X *Work-Product* [redacted]

*Work-Product* [redacted]  
Board Operations Manager, AFBCMR  
Signed by: USAF