RECORD OF PROCEEDINGS

IN THE MATTER OF: XXXXXXXXXXXX

DOCKET NUMBER: BC-2022-01461

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. He be given a medical retirement with a disability rating of 75 percent.

2. His separation code be changed to "EA" or "EJ" which denotes disability, combat, Integrated Disability Evaluation System (IDES).

3. His Department of Veteran's Affairs (DVA) disability effective date be changed to 30 Nov 12.

4. He be given a DD Form 214, *Certificate of Release or Discharge from Active Duty*, which reflects all his federal military service time.

5. His SF-52 be corrected (**outside the Board's purview**). This request is annotated on the rebuttal.

6. His rehire rights as a technician (**outside the Board's purview**) and his military (traditional guard position) be reviewed. This request is annotated on the rebuttal.

APPLICANT'S CONTENTIONS

He was denied entitlements, transition assistance and a separation medical/physical examination upon his forced military and technician separation in Nov 12. The African Command (AFRICOM) Inspector General (IG) records confirm he requested an exam and transition assistance prior to separation. Even though he was on active duty orders for over two years, the IG cited his status as a guardsman and civilian federal technician as grounds for denying his request. He would have qualified for DVA disability and/or a medical retirement if these actions were completed properly at the time of his separation. While there are clear injustices pertaining to rehire rights, reprisal/whistleblower cases, denied entitlements, denied citations, and false allegations, there is not currently a mechanism to address these issues. He is requesting his records be corrected to show he was medically retired with a DVA disability effective date to coincide with his release from active duty. Granting these requests does not make up for the forced separation, denied rehire rights, refusal to pay entitlements, strain on mental and physical health, and complete attack on his integrity.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air National Guard (ANG) major (O-4). He was separated from active duty on 1 Nov 06 and was appointed to the ANG on 2 Nov 06.

On 1 Nov 06, the applicant's DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects he was honorably discharged in the grade of captain (O-3) after serving seven years and five months of active duty for this period. He was discharged, with a narrative reason for separation of "Force Shaping – Voluntary Separation Program (VSP)."

On 27 Jun 07, the applicant's DD Form 214, reflects he was honorably discharged in the grade of captain (O-3) after serving two months and seven days of active duty for this period. He was discharged, with a narrative reason for separation of "Completion of Required Active Service." This DD Form 214 covers the period of active duty from 21 Apr 07 to 27 Jun 07.

On 30 Nov 12, the applicant's DD Form 214, reflects he was honorably discharged in the grade of major (O-4) after serving two years and seven months of active duty for this period. He was discharged, with a narrative reason for separation of "Completion of Required Active Service." This DD Form 214 covers the period of active duty from 1 May 10 to 30 Nov 12.

On 15 May 13, the applicant's NGB Form 22, *National Guard Bureau Report of Separation and Record of Service*, reflects he was honorably discharged from the ANG after serving 13 years, 11 months and 14 days of total service for pay. He was discharged, with a narrative reason for separation of "Accepting Civil Employment/Military Service with Foreign Government-Resign in Lieu." In the case files from the IG office, it is noted the applicant requested a voluntary separation from the NY ANG with an effective date of 15 May 13.

Dated 6 Feb 18, the applicant's IG whistleblower/reprisal complaint indicates he filed a complaint against his unit stating the following:

> While deployed on Title 10 status to Africa, member was denied payment of entitlements and benefits. Member continued to formally request payments and was denied, which ultimately led to multiple detrimental personnel actions under his permanent military and federal technician positions, a reprisal investigation into his actions, and finally a constructive resignation from both positions. The XX National Guard continues to withhold paperwork allowing for rehire rights, DVA benefits, and denies the member guidance on transition assistance. This is an on-going request, including continued IG request with XX, XX Governor's office, and a failed filing with Merit System Protection Board (MSPB) due to jurisdiction. XX National Guard representatives provided false documents during the MSPB appeal on Dec 17, after denying they had requested paperwork by the XX IG in Sep 17. The affected member has filed multiple chain-of-command requests, IG-assistance requests, Governor's office, Employer Support for Guard and Reserve (ESGR), and MSPB appeals. All agencies continue to deflect, stating member needs to file with other agencies causing long standing delays in action. This is compounded by XX National Guard members providing false and misleading

information, accusations against the member, and outright denying to answer the member's requests for assistance on where to file.

On 2 Oct 18, a final response to the applicant's case numbers FRNO #2017-XXXX and FRNO # 2018-XXXX from the XX IG office notes the following that is relevant to the current case before this Board:

> The issue regarding an incorrect DD Form 214 was resolved when the XXX XXX IG referred him to the Air Reserve Personnel Center (ARPC) to request correction through the issuance of a DD Form 215, *Correction to the DD Form 214*. He was informed these documents were available to him through the Air Force My Personnel Services (myPers) portal, to which he was also provided instructions on how to access. Furthermore, it was noted should he find further errors on either document, he could contact the AFPC Total Force Service Center.
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> With regards to the applicant not having received a transition assistance brief, separation brief, or medical and security clearance out processing, such briefs or out processing are not mandatory for civilian employees and traditional guardsman who resign. A separation package was sent on 27 Jun 13 by the Human Resources Office (HRO) to his home of record at the time of his separation. He was directed to refer any questions regarding Federal Employees Retirement System (FERS) retirement or deposit withdrawals to the Office of Personnel Management and questions regarding the Thrift Savings Program (TSP) withdrawals or allocations to www.tsp.gov. The separation package consisted of information from both websites. Any additional questions can be addressed by these agencies. Furthermore, the XX Transition Assistance Advisor (TAA), emailed numerous resources that offered information regarding entitlements and benefits afforded to separated service members. This issue is closed from the IG perspective per AFI 90-301, *Inspector General Complaints Resolution*, Chapter 3.

This letter indicates the IG considered the applicant's issues resolved and closed his case. They further directed the applicant to file an appeal within 90 days if he was not satisfied with the complaint resolution and to apply to the AFBCMR if his records were unable to be corrected as indicated.

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

APPLICABLE AUTHORITY/GUIDANCE

Title 10, United States Code, Section 1168: Discharge or release from active duty: limitation; DoDI 1336.01, *Certificate of Release or Discharge from Active Duty (DD Form 214/5 Series)*; AFI 36-3202, *Certificate of Release or Discharge from Active Duty (DD Form 214/5 Series)*; DD Form 214 Total Force Personnel Services Delivery Guide. The DD Form 214 is prepared in accordance with the aforementioned publications and is used to record qualifying active duty service.

Air Reserve Component (ARC) members on continuous active duty for 90 calendar days or more will be issued a DD Form 214. A DD Form 214 is issued for each qualifying period of active service. A DD Form 214 may also be issued to ARC members for completion of less than 90 continuous calendar days of active duty for the following reasons: (1) completion of an initial active duty for training (IADT) regardless of length of time; (2) ordered or called to active duty for support of a DoD named Contingency Operation for 30 days or more; (3) or separating for cause (for ARC Airman).

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, 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 Post-Traumatic Stress Disorder (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 paragraphs 6 and 7 of the Wilkie memorandum.

On 21 Feb 23, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit J) and the applicant replied on 9 Mar 23. In his reply, the applicant makes the following points as it relates to fairness in his case. He was denied transition assistance which was mandatory at the time of separation and is clearly documented in the AFRICOM IG records. While his PTSD and mental health concerns were never formally diagnosed in his military medical treatment records, he still struggled and his health deteriorated during service. He continues to suffer from suicide ideations, paranoia, and conspiracy theories with a lack of trust for any leadership. His ratings from the DVA clearly identify several health concerns at the time of his separation that far exceed the threshold for a medical retirement. His unit falsely accused him of wrong doings which inflamed his medical health conditions. His leadership stated "they knew they could force me to quit if they moved me to a flying position, as I could no longer perform those duties."

The applicant's complete response is at Exhibit L.

AIR FORCE EVALUATION

The AFBCMR Medical Advisor recommends denying the applicant's request for a medical retirement finding no evidence of an error or injustice. Based on the reviewed documents, it appeared that the pre-separation requirements with regards to his claimed medical injustice were appropriate and accomplished in accordance with regulatory guidance.

In accordance with 38 Code of Federal Regulations (CFR) 3.400 the effective date of granting a DVA disability impairment rating is the date that the DVA receives the claim, if it is received more than one year after service separation. Otherwise, if submitted within the first year after separation, the effective date of the rating is the date of service separation. In this case the applicant filed his original DVA claim in 2021, many years after his service separation and hence the effective date of his rating is the day the DVA received the claim on 23 Jun 21. There is no basis provided within the DoD as to overturn the 38 CFR regulatory guidance.

The applicant's verbiage of "…disabilities existing in 2012" stated in reference to his DVA rating in 2021 infers that if such a rating would have been applied in 2012 for his physical conditions at that time, he would have rated a medical retirement. The records did reveal that the applicant's original DVA rating of 80 percent was at some point raised to 100 percent; however, such a DVA rating has no equal basis when compared to military disability and its eligibility criteria. It remains paramount to brief the difference between the military and DVA disability evaluation. For awareness sake, the military's 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. Therefore, in accordance with applicable laws, a change in military records to reflect an eligibility date for the DVA rating as being the active duty separation date is non-applicable in this case.

The applicant's request to correct his disability entitlement to reflect all service-connected injuries is strictly a component of the DVA and its governing guidance. The wording of such a request leaves a bit of uncertainty in its interpretation. Not all claimed conditions in seeking disability from the DVA are ratable or even deemed service-connected. Also, some conditions can be service-connected but still not meet ratable criteria. A direct grant of DVA service connection requires medical evidence of a current disability, evidence of the incurrence or aggravation of a disease or injury in active military service and medical evidence of a nexus between the current disability and the in-service disease or injury. The DVA independently determines through careful record reviews, the service connection for all claimed conditions.

The applicant stated that a military medical retirement was (is) the appropriate separation based on disabilities that existed in 2012. According to the reviewed medical records, there were no medical/physical disabilities present in 2012. Clearly, his flight physical/physical health assessment (PHA) conducted in late Jun 12 revealed a clean bill of health and has remained so since his last annual flight physical examination (PE). Furthermore, in addressing his complaint that he was denied a separation PE upon active duty separation in Nov 12…he did not need one. A PE conducted for or around service separation is also known as a Separation History and Physical Examination (SHPE) and all active duty members require such an exam. However, under the Directive-type Memorandum (DTM) 14-006, dated Jul 14, it denotes that a DoD-performed PE may be accepted between 90 days and up to 12 months prior to the scheduled date of separation from active duty if it meets SHPE minimum standards. When the exam is performed within that prior year, a special medical assessment must also be completed no more than 30 days prior to separation from active duty and documented in the service treatment record. A complete flight physical examination exceeds the minimum standards for a SHPE and in this case, it was done well within the 12-month period prior to separation. Although the flight PE sufficed for the SHPE the applicant still required the medical assessment be conducted 30 days prior to service separation. Such an assessment was not found in the submitted documents nor in

the electronic records. The medical assessment is obtained on DD Form 2697, *Report of Medical Assessment*, which asks eight questions regarding ones' health. It does not require an in-clinic personal encounter, but rather a simple action of filling out the form which is then reviewed by a healthcare provider. The Medical Advisor cannot say with certainty that the military was in error by which they did not review such a medical assessment within 30 days of separation, but rather the advisor can say with certainty that no such document was found in the submitted documents or those contained in the electronic data base. However, even if the DD Form 2697 was not filled out nor reviewed appropriately, the Medical Advisor opines the complete flight PE coupled with no interim reports of adverse symptoms between Jun and Nov 2012, such a brief assessment would be non-contributory and futile at best.

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 24 Jan 23 for comment (Exhibit D), and the applicant replied on 13 Feb 23. In his response, the applicant notes the following areas of concern (1) denied rehire rights; (2) denied transition assistance; (3) denied medical exam/assessment; and (4) denied accurate separation documents. At the time of his separation, he was retaliated against for filing an IG complaint on withheld benefits, subjected to a retaliatory investigation and false allegations of wrongdoing, threatened and forced to resign, and did not receive any support while living in a foreign country without access to the DVA.

The medical advisory provided only reviews including a citation of a Flight Exam in Jun 12. He was told not to address known medical conditions documented in his records if the status had not changed during flight exams. He has several medical conditions documented in his military medical records which were present at the time of separation to include mental health concerns from 2006 and 2010, right index and middle finger laceration from 2009 and 2010, sleep apnea from 2005 and 2006, a deviated septum from 2005, sinusitis from 2003, right elbow injury from 1998, 2000, and 2006, and knee and back issues from 1997, 1998, and 2006. While the flight physical was thorough, he continued to serve in Africa from Jun through Dec 12 with major concerns regarding his health the last five months. The special medical assessment was not provided even though he continued to ask for a medical evaluation and transition assistance. His health also declined during his five month period due to the denial of his rehire rights, the retaliatory investigation, separation from his family, and financial hardship. When assessing the "snapshot" of fitness for duty, the stressor events from Jun to Dec 12 must be considered. His medical conditions were all exacerbated by stress. He was denied transition assistance which would have included training on the DD Form 2697, DVA disability claims, and rehire rights. He did not know he had one year to file a disability claim or that he could file without a complete separation health assessment.

In addition to his previous requests, the applicant asked that is SF-52 be corrected and that his rehire rights as a federal technician and his military, traditional guard position be reviewed. He states he was not offered these positions upon the end of his active duty tour and that he was moved from his technician and military position to an instructor pilot position to which he was

not qualified. Due to this, he required a complete pilot requalification and his commander openly stated he was moved to this position to make him quit.

The applicant's complete response is at Exhibit E.

ADDITIONAL AIR FORCE EVALUATION

On 14 Feb 23, the AFBCMR Medical Advisor revised his advisory deleting the last paragraph from the previous advisory and replacing it with the following:

The applicant stated a military medical retirement was (is) the appropriate separation based on disabilities that existed in 2012. According to the reviewed medical records, there were no medical/physical disabilities present in 2012. There are two different approaches to assess the overall medical condition of a service member near the time of their service separation. Either the service member will undergo a complete Separation History and Physical Exam, also known as a SHPE or a down-scaled Report of Medical Assessment questionnaire (DD Form 2697). The Form 2697 has eight questions regarding the status of ones' health. It does not require an in-clinic personal encounter, but rather a simple action of filling out the form which is then reviewed by a healthcare provider. AFI 48-123, *Medical Examinations and Standards*, dated 24 Sep 09, paragraphs 8.5.1 and 8.5.1.1 note a medical assessment by a credentialed provider and documented on DD Form 2697 and supporting documents is mandatory when the service member has not had a PHA within one year. In this case, the applicant's flight physical/PHA was conducted in late Jun 12 (five months prior to his separation) which revealed a clean bill of health and was unchanged since his previous annual flight PE. Clearly, his Jun 12 flight physical/PHA having been performed within the last 12 months prior to his separation did not support the requirement of a secondary DD Form 2697 being initiated. In addressing the applicant's complaint he was denied a separation PE upon service separation in Nov 12…he did not need one. However, although the applicant's flight PE sufficed for the SHPE, he argues he "…still required the medical assessment be conducted 30 days prior to service separation." Such an argument is not accurate nor compelling and runs against regulations in effect at the time of separation.

The complete revised advisory opinion is at Exhibit G.

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. In the applicant's original application to the AFBCMR he did not make any contentions pertaining to his mental health condition at that time. The applicant submitted a rebuttal dated 13 Feb 23. In his rebuttal, he claimed at the time of his separation, he was "retaliated against for filing an IG complaint on withheld benefits and was subjected to a retaliatory investigation and false allegations of wrongdoing, threatened and forced to resign, and did not receive any support while living in a foreign country without access to Veteran Affairs." He provided a list of medical conditions that he claimed had been documented in his military medical records and were present at the time of his discharge. Relevant to mental health, he identified "Mental Health concerns (2006, 2010)" but provided no clarifying information about these concerns. In a different part of his rebuttal statement, he asserted, "When assessing the "snapshot" of fitness for duty, the

stressors of events from Jun to Dec 12 must be considered. Sleep apnea, PTSD/Mental health issues, and pain thresholds (knee, back, fingers, etc.) can all be exacerbated by stress. The degradation of health is directly related to refusal of rehire, non-payment of entitlements, filing an IG complaint, false accusations of wrongdoing (retaliatory due IG complaint), and investigation beginning late Sep-Nov 12." He also asserted precedent for the "Integrated Single Disability Evaluation" [correction: Integrated Disability Evaluation System] between the Department of Defense (DoD) and DVA could be used in his case to review the "snapshot" of fitness at the time of separation and cited DVA ratings he received for conditions that had existed and was documented prior to Dec 12. He listed his several DVA service-connected medical conditions and identified receiving a 70 percent rating for PTSD that he alleged had "existed but level not assessed due to denied medical exam." In his original application, he submitted a DVA Rating Decision letter dated 7 Jan 22 reporting he was service-connected for PTSD with an evaluation of 50 percent effective 23 Jun 21. An updated letter from the DVA dated 22 Dec 22 that he submitted with his rebuttal statement did not include any mental health conditions. He did not submit any mental health treatment records for review.

The Psychological Advisor will only address his mental health condition and recommends the Board to review the medical advisory to address his contentions for his physical conditions. A review of the available records finds his contentions pertaining to his mental health condition were not corroborated by his objective service treatment records. The applicant stated he had mental health concerns in 2006 and 2010 but there was no evidence to substantiate this report. His available records revealed he was seen at least three times in 2006 when he was an active duty service member in the regular Air Force for a PHA, Return to Flying Status (RTFS), and separation physical examination. He made no report of having any mental health concerns or issues during any of these examinations and in fact, during his RTFS examination performed on 11 May 06, his mental status was assessed to be normal. During his evaluation with the DVA on 11 Feb 22, he reported struggling mentally dating back to 2003 from his deployment to Iraq but no records exist to substantiate this experience. The applicant transferred to the ANG shortly after his discharge from active duty service in 2006 and when this occurs, he needed to meet accession standards. His ability to transfer to the ANG showed he was determined fit for duty at that time. For the year 2010, there were also no records of any mental health concerns as he claimed. He reported to his DVA provider, "In 2010 vet felt like he was handling things well" and mentioned he had developed a safety plan for his frequent suicidal ideations. There were no records to corroborate these reports especially of any safety concerns and no records these events occurred when he was on ANG orders.

The applicant contended when assessing the "snapshot" of fitness for duty, the stressors of events from Jun to Dec 12 must be considered. He identified "PTSD/Mental health issues" as one of his numerous medical issues. There was no evidence he was diagnosed with PTSD, had PTSD or trauma related symptoms, or any other mental health condition during this time frame or at any other time during his service. He received two annual flight physicals (AFP) during the last two years of his service with the ANG on 30 Mar 11 and 27 Jun 12 respectively, and these examinations yielded no mental health complaints or issues made by the applicant. His last AFP occurred during the aforementioned period of Jun to Dec 12, and he screened negative for depression, alcohol abuse/misuse, and nicotine dependency. He claimed his condition of PTSD had existed but was not assessed because he was denied a medical examination. There was no

evidence to support this claim. The applicant did receive a medical examination in the form of a PHA/AFP on 27 Jun 12, five months before his discharge. He was not required to receive a mandatory medical examination at or near the time of separation because he already received an annual examination within one year of discharge per AFI 48-123, *Medical Examinations and Standards*, and thus, he was not denied a medical examination. Furthermore, the applicant did not make any complaints of any mental health concerns during any of his annual examinations and so there was no reason for him to be formally assessed for PTSD.

The applicant informed his DVA provider he received counseling while on active duty and finds this service helpful indicating he benefitted from treatment services. No other information was provided about this counseling service to include the time period of service. His records for this counseling service were unavailable for review. There were no records supporting the applicant received any mental health treatment, evaluation, or mental disorder diagnosis during service. The applicant was never placed on a duty limiting condition (DLC) profile for his mental health condition, he was never deemed not worldwide qualified (WWQ) due to his mental health condition, and there were no reports from his medical providers or leadership his mental health condition had interfered with his ability to reasonably perform his military duties in accordance with his office, grade, rank, or rating. All of his Officer Performance Reports OPR) (about 10 total) he received during his entire military career reflected he "Meet Standards" for his job skills and knowledge and received accolades and praises for his performance. These evaluations did not demonstrate there were any issues with his ability to perform his military duties especially by his mental health condition. He was never determined to be not fit for duty by his medical providers and he received medical clearance each time he was evaluated. Moreover, since the applicant was an ANG member, an In Line of Duty (ILOD) or Line of Duty (LOD) determination for his mental health condition is required for a compensable medical discharge. There were no records he received any ILOD or LOD determination for any conditions. It is reminded that receiving mental health treatment, receiving a mental disorder diagnosis, or experiencing a mental health concern does not automatically render a condition as unfitting. More information is needed and required for this unfitting determination as outlined. His records were absent for all of these markers demonstrating he did not have any unfitting mental health conditions that would meet criteria to be referred to the Medical Evaluation Board (MEB) and DES for a medical discharge/retirement. Lastly, the applicant was discharged from service for completing his required active service. The fact that he was able to complete his service obligation and earned an honorable discharge (for all service terms) signified his mental health condition had no impact on his ability to perform his military duties or affected his overall functioning. The applicant was diagnosed with PTSD by a DVA provider on 11 Feb 22, about 10-years post-discharge. He endorsed having suicidal ideation, anxiety, panic, sleep issues, and paranoid thoughts during his evaluation. He previously endorsed symptoms of avoidance, hypervigilance, nightmares, detachment, and guilt to a nurse at the DVA when he was screened for PTSD a month prior in Jan 22. Apart from his sleep issues, there was no evidence he experienced or reported having these symptoms during his military service. It appeared he had a delayed onset of PTSD causing him to develop these symptoms and meeting diagnostic criteria for this condition several years post-discharge. Again, there was no evidence his condition of PTSD had existed or occurred during service that would impair his ability to function in a military setting and that would lead to early career termination.

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 contends he had mental health concerns in 2006 and 2010 and PTSD/mental health issues from stressors of events from Jun to Dec 12. He believes he was unfit and requested a medical discharge/retirement.

2. Did the condition exist or experience occur during military service?
There is no evidence the applicant's condition of PTSD had existed or occurred during military service. He did not receive any mental health treatment, evaluation, or mental disorder diagnosis during his military service to include in 2006, 2010, and from Jun to Dec 12. He reported to the DVA he received counseling services during active duty but no records were produced to substantiate this claim. He was examined several times by his Primary Care Manager (PCM) during service for PHA, RTFS, and AFP and did not report having any mental health issues but actually denied having any mental health issues to include depression, alcohol misuse/abuse, and nicotine dependency. He was diagnosed with PTSD from his military experience by his DVA provider almost 10-years post-discharge.

3. Does the condition or experience actually excuse or mitigate the discharge?
There was no evidence the applicant had any unfitting mental health conditions to include PTSD that would meet criteria to be referred to the MEB/DES for a medical discharge/retirement. He was never placed on a DLC profile and never deemed not WWQ due to his mental health condition. There were no records his mental health condition had interfered with his ability to perform his military duties and no ILOD/LOD determination was granted for his mental health condition. There was no evidence he should have received a medical discharge for his mental health condition. 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 H.

APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

The Board sent a copy of the advisory opinions to the applicant on 16 Feb 23 for comment (Exhibit I), and the applicant replied on 23 Feb 23. In his response, the applicant states the medical advisory is incorrect when it states the applicant did not need a separation physical, which was mandatory. The PHA/flight physical he received is different and according to AFI 48-123, he had a right to request an exam which would have been utilized to determine fitness for continued worldwide service.

In response to the psychological advisory, he did not contend he had a mental health issue that meet the requirement for discharge in 2003, 2006, 2010, or 2012, but rather warranted a medical

assessment for medical retirement determination in Nov 12. He suffered stress which was exacerbated by his sleep apnea and suffered a severe panic attack in Jan 10. After his Jun 12 PHA/flight physical, he was subjected to a retaliatory investigation, refusal of transitions assistance, refusal of rehire rights, and withholding/refusal to be paid entitlements causing financial hardship. He repeatedly requested physical exams and assessments and was denied, ruling out any records of mental health issues at the time of separation. A severe sense of abandonment, paranoia, conspiracy theories, and fight/flight responses left him with difficulty determining reality from conspiracy for the past decade. A liberal review of his records shows grounds for PTSD and mental health issues being overlooked and requests the Board provide liberal consideration when reviewing his mental health conditions at the time of his separation. The nexus between sleep disorders, sleep apnea, Uvulopalatopharyngoplasty (UPPP) patients, TBI and mental health disorders including PTSD are well documented in the medical field. To the contrary, military service members in 2012 and prior were known to avoid mental health and PTSD stigmas to remain on flight/jump/special operations status. The realistic opportunity for documentation of all health conditions at the time of separation, would have been through the mandatory DD 2697 health assessment and his requested examination. Additionally, they would have been documented in his completed military separation paperwork and federal technician separation paperwork which were not processed.

The applicant's complete response is at Exhibit K.

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 the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. Specifically, the Board finds no evidence that his medical conditions were incurred as a direct result of armed conflict; while engaged in hazardous service; under conditions simulating war; or caused by an instrumentality of war nor did they find his medical conditions warranted a medical retirement. The mere existence of a medical/mental health diagnosis does not automatically determine unfitness and eligibility for a medical separation or retirement. The applicant's military duties were not degraded due to his medical/mental health conditions. A Service member shall be considered unfit when the evidence establishes the member, due to a disability, is unable to reasonably perform the duties of his or her office, grade, rank, or rating. Furthermore, the Board applied liberal consideration to the evidence submitted by the applicant; however, it is not sufficient to grant the applicant's request. The Board finds no evidence the applicant's condition of PTSD had existed or occurred during military service; he did not receive any mental health treatment, evaluation, or mental disorder diagnosis during his military service. Additionally, the Board finds no error or injustice with regards to the applicant's voluntary resignation from the ANG and his rehire rights as a technician and correction of his SF 52s is outside the Board's purview. The Secretary of the Air Force has no jurisdiction over the ANG Federal Technician Program; all concerns must be addressed by the Office of Personnel Management (OPM). In regards to the

applicant's request to change the effective date of his DVA disability rating, the Board finds that there is no basis provided within the DoD to overturn the 38 CFR regulatory guidance. The effective date of granting a DVA disability impairment rating is the date the DVA receives the claim, if it is received more than one year after service separation, which in the applicant's case was 23 Jun 21. Furthermore, the Board finds the applicant received the proper medical examination prior to separation which was done under proper regulatory guidance. Regarding the applicant's contention he did not receive transition assistance, the Board felt the applicant was provided assistance and references throughout his numerous correspondences and felt the IG office correctly handled this contention. Finally, regarding the applicant's request for a DD Form 214 to cover all his periods of service, as referenced above, a DD Form 214 is issued for each qualifying period of active service. Therefore, the Board recommends against correcting the applicant's records.

4. The applicant alleges he has been the victim of reprisal and has not been afforded full protection under the Whistleblower Protection Act (10 USC § 1034). The Board noted the applicant submitted documentation of a reprisal IG complaint; however, the SAF/IG office had no records of a reprisal complaint filed by the applicant. Nevertheless, in accordance with 10 USC § 1034, the Board reviewed the evidence of record to reach its own independent determination of whether reprisal occurred. Based on the Board's review, they do not conclude the applicant has been the victim of reprisal. The Board states the applicant has failed to establish that the adverse personnel actions regarding his permanent military and federal technician positions are in reprisal for him making a protected communication. Therefore, the Board does not find the applicant has been the victim of reprisal pursuant to 10 USC. Section 1034.

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-2022-01461 in Executive Session on 22 Mar 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 5 Apr 22.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, AFBCMR Medical Advisor, dated 23 Jan 23.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 24 Jan 23.
Exhibit E: Report of Investigation – WITHDRAWN.
Exhibit F: Applicant's Response, w/atchs, dated 13 Feb 23.
Exhibit G: Advisory Opinion, Revised AFBCMR Medical Advisor, dated 14 Feb 23.
Exhibit H: Advisory Opinion, AFRBA Psychological Advisor, dated 15 Feb 23.
Exhibit I: Notification of Advisory, SAF/MRBC to Applicant, dated 16 Feb 23.
Exhibit J: Letter, SAF/MRBC, w/atchs (Liberal Consideration Guidance), dated 21 Feb 23.
Exhibit K: Applicant's Response, dated 23 Feb 23.
Exhibit L: Applicant's Response, dated 9 Mar 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.

X

Board Operations Manager, AFBCMR