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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-01749

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

He be given a retroactive Medical Evaluation Board (MEB) to garner all entitlements afforded to medically separated service members.

APPLICANT'S CONTENTIONS

At the time of his discharge, he was not medically qualified to continue service due to his Post-Traumatic Stress Disorder (PTSD) and musculoskeletal injuries acquired during military service. If a MEB had been conducted, he would have been unfit for duty and eligible for the temporary disability retired list (TDRL). His failing health was the reason he could not meet standards of physical fitness rather than a breach of discipline. His leadership used him as a political scapegoat instead of prioritizing his health.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 1 Jul 16, the applicant's commander recommended he be discharged from the Air Force, for unsatisfactory performance, specifically, Failure to Meet Minimum Fitness Standards under the provisions of AFD 36-32, *Military Retirements and Separations*, and AFI 36-3208, *Administrative Separation of Airmen*. The specific reasons for the action were:

- a. On 12 Nov 14, the applicant received a Letter of Counseling (LOC) for failing his fitness assessment (FA). Additionally, he received a referral Enlisted Performance Report (EPR), dated 31 Jan 15.
- b. On 18 Feb 15, the applicant received a Letter of Reprimand (LOR) for failing his second FA within a 24-month period.
- c. On 25 Mar 16, the applicant received a referral EPR for failing his third FA within a 24-month period.
- d. On 24 May 16, the applicant received a referral EPR for failing his fourth FA within a 24-month period.

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On 25 Sep 16, the Assistant Staff Judge Advocate found the discharge action legally sufficient.

On 8 Nov 16, the discharge authority directed the applicant be discharged for failure to meet minimum fitness standards with an honorable service characterization without the offer of probation and rehabilitation.

On 17 Nov 16, the applicant received an honorable discharge. His narrative reason for separation is "Physical Standards." He was credited with eight years, six months, and five 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, D and E.

POST-SERVICE INFORMATION

On 20 Jan 23, the Board sent the applicant a standard request for post-service information. This letter informed the applicant that a Federal Bureau of Investigation (FBI) background check would assist the Board in evaluating his case. Although the applicant did reply to the request for post-service information (Exhibit H), his response did not include an FBI background check or other criminal history data.

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?

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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 20 Jan 23, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit G).

AFI 36-3208, *Administrative Separation of Airmen*, describes the types of service characterization:

Honorable. The quality of the airman's service generally has met Air Force standards of acceptable conduct and performance of duty or when a member's service is otherwise so meritorious that any other characterization would be inappropriate.

Under Honorable Conditions (General). If an airman's service has been honest and faithful, this characterization is warranted when significant negative aspects of the airman's conduct or performance of duty outweigh positive aspects of the airman's military record.

Under Other than Honorable Conditions. When basing the reason for separation on a pattern of behavior or one or more acts or omissions that constitute a significant departure from the conduct expected of airmen. The member must have an opportunity for a hearing by an administrative discharge board or request discharge in lieu of trial by court-martial. Examples of such behavior, acts, or omissions include, but are not limited to:

- The use of force or violence to produce serious bodily injury or death.
- Abuse of a special position of trust.
- Disregard by a superior of customary superior - subordinate relationships.
- Acts or omissions that endanger the security of the United States.
- Acts or omissions that endanger the health and welfare of other members of the Air Force.
- Deliberate acts or omissions that seriously endanger the health and safety of other persons.
- Rape, sexual assault, aggravated sexual contact, abusive sexual contact, rape of a child, sexual assault of a child, sexual abuse of a child, forcible sodomy and attempts to commit these offenses.

AIR FORCE EVALUATION

AFPC/DP2SSR finds there is no evidence of an error or injustice with the discharge processing. A review of the applicant's master of personnel record revealed the commander notified the applicant of the intent to discharge with board entitlement. The applicant had failed to meet minimum standards of physical fitness on numerous occasions. The applicant's commander provided ample justification to support separation to the base discharge authority. Based on review of the documentation found in the record, the discharge was consistent with the procedural and

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substantive requirements of the discharge instruction, the applicant was afforded due process, and was within the discretion of the discharge authority.

The complete advisory opinion is at Exhibit C.

The AFBCMR Medical Advisor finds insufficient evidence to support the applicant's request for a MEB adjudication within the Disability Evaluation System (DES). Having any sort of physical condition in and of itself is not an automatic roadmap to a MEB. The requirement as to the appropriateness of meeting an MEB is when a potentially unfitting condition is determined to render the service member with the inability to reasonably perform the duties of their office, grade, rank, or rating and may be the cause for the premature termination of the member's military career. The applicant had been cleared for a flying class physical, deployment, and an overseas assignment which is great evidence he had maintained his ability to perform his commensurate military duties. Therefore, he was not a candidate for processing through the DES leading to a MEB. 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 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 members retainability, fitness to serve, or the length of time since date of discharge.

There was no evidence of a material error, injustice, impropriety, or inequity found in the discharge processing for multiple FA failures. The determining cause of obesity does not constitute a physical disability and therefore, the administrative separation was appropriate and was carried out in a proper manner in accordance with applicable guidance and instruction.

The complete advisory opinion is at Exhibit D.

The AFRBA Psychological Advisor has reviewed the available records and finds the applicant has not met the burden of proof to support his request. The applicant was never diagnosed with any mental disorder diagnosis to include PTSD during service. Experiencing mental health symptoms, receiving treatment, or receiving a mental disorder diagnosis does not automatically render a condition as unfitting. The applicant did not have any identified potentially unfitting mental health conditions to include PTSD that would meet criteria for a referral to the MEB. He was never placed on a duty limiting condition (DLC) profile for his mental health condition, was never deemed not worldwide qualified (WWQ) due to his mental health condition, and no statements from his leadership and/or medical providers reporting his mental health condition had interfered with his ability to reasonably perform his military duties in accordance with his office, grade, rank, or rating. It is possible his symptoms of depression may cause him to fail his FA because depression may produce lack of energy, poor concentration, and weight issues that may be a contributing factor to this FA problems; however, his depression never elevated to an unfitting mental health condition. Therefore, the Psychological Advisor finds insufficient evidence has been presented to support the applicant's request for a medical discharge/retirement for PTSD.

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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 contended he had acquired PTSD from his deployment to Afghanistan and numerous musculoskeletal injuries acquired throughout his career. He believed his inability to adhere to prescribed physical standards were not a breach of discipline but rather a consequence of his failing health. He believed his mental health condition would have been found unfitting should he had been referred to the MEB.

2. Did the condition exist or experience occur during military service?
There is no evidence his mental health condition of PTSD had existed or occurred during military service. He reported having symptoms consistent to Generalized Anxiety Disorder (GAD), depression, sleep issues, and anger management problems during his separation physical to his primary care manager and the causes and triggers for these symptoms were not identified. He was never given any mental disorder diagnosis during service. He was diagnosed with PTSD by a military provider at his local military treatment facility two years post discharge caused by his childhood trauma and deployment experiences and began experiencing trauma related symptoms one year prior that evaluation that was recently aggravated by his post-service marital problems.

3. Does the condition or experience excuse or mitigate the discharge?
Although it is possible his mental health condition may have been a contributing factor to his FA failures, there was actually no objective evidence to support this notion. The applicant's mental health condition to include PTSD never elevated to potentially unfitting meeting criteria to be referred to the MEB for a potential medical discharge or retirement. He was never placed on a DLC profile for his mental health condition, never deemed not worldwide qualified due to his mental health condition, and his mental health condition was never determined to have interfered with his ability to reasonably perform his military duties in accordance with his office, grade, rank, or rating. 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 was found to have not excused or mitigated his discharge, his mental health condition also does not outweigh his original administrative discharge. There was no evidence to support the applicant should have received a medical discharge or retirement.

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 18 Jan 23 for comment (Exhibit F), and the applicant replied on 26 Jan 23. In his response, the applicant contends the organizational environment at the time of his discharge presented insurmountable obstacles to his physical and mental health pursuant to accomplishment of the patient care. He believes his PTSD from childhood is separate from his PTSD from his military service. He believes proper

rehabilitative care for his service acquired physical and mental injuries would have allowed him to return to duty without worsening his health concerns which led to his discharge.

The applicant's complete response is at Exhibit H.

FINDINGS AND CONCLUSION

1. The application was timely filed. Given the requirement for passage of time, all clemency and discharge upgrade requests are technically untimely. However, it would be illogical to deny such application as untimely, since the Board typically looks for over 15 years of good conduct post-service. Therefore, the Board declines to assert the three-year limitation period established by 10 U.S.C. § 1552(b).
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 recommendations of AFPC/DP2SSR, the AFBCMR Medical Advisor and AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. Furthermore, the Board applied liberal consideration to the applicant's request. The Board notes his mental health condition to include PTSD never elevated to potentially unfitting meeting criteria to be referred to the MEB for a potential medical discharge or retirement. In the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; however, given the evidence presented, and in the absence of post-service information and a criminal history report, the Board finds no basis to do so. Therefore, the Board recommends against correcting the applicant's records.
4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

RECOMMENDATION

The Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

CERTIFICATION

The following quorum of the Board, as defined in 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-2022-01749 in Executive Session on 26 Apr 23:

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 22 Jun 22.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DP2SSR, dated 25 Jul 22.
- Exhibit D: Advisory Opinion, AFBCMR Medical Advisor, dated 19 Dec 22.
- Exhibit E: Advisory Opinion, AFRBA Psychological Advisor, dated 11 Jan 22.

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- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 18 Jan 23.
- Exhibit G: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 20 Jan 23.
- Exhibit H: Applicant's Response, w/atchs, dated 26 Jan 23.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

1/1/2024

Work-Product

Board Operations Manager, AFBCMR

Signed by: *Work-Product*