Work-Product

UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2022-02670

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

He be given a medical separation by having his narrative reason changed to medical for mental illness.

APPLICANT'S CONTENTIONS

He was involuntarily administratively discharged prior to the end of his 6-year enlistment in the Air Force with an honorable/miscellaneous discharge for the good of the service. He should have been discharged with a medical separation due to mental illness. His commander abused his discretion by administratively discharging him as quickly as possible because of his mental illness. His commander did not want to process him through the lengthy medical separation process for a fitness determination. He has been mentally ill his entire life however was not aware of this until 1998. He started to have problems in basic military training (BMT) when he was separated from his wife and once his wife was able to join him, his depression and anxiety became more bearable. Several times during his military career his mental illness worsened when he was separated from his wife and family. When he was assigned a remote tour, his separation from his family caused his mental illness to be permanently aggravated to the extent he was no longer able to return to a normal state of mental stability. He was seen by a mental health specialist but was not offered any help to deal with his depression, anxiety, or panic attacks and was told he had a passive/dependent personality which was why he was having problems with his separation from his family. He later attempted suicide when his wife informed him she wanted a divorce and used alcohol to cope with his mental illness. After leaving the military, his life became worse as he could not hold down a job for more than a few months and was forced to live with his parents. He tried to go back to college but did not have the mental capacity to finish. At least once a year, he tried to commit suicide. He was remarried but his new wife also suffered from mental illness which led to his involvement with his stepdaughter. He is currently incarcerated for molestation of a juvenile and 2nd-degree attempted murder and was sentenced to 65 years and is afraid he will not have the medical care available to help cope with his mental illness when he is released from incarceration. It was not until 2019 when he was denied benefits from the Department of Veterans Affairs (DVA) for his mental illness that he realized his discharge was unjust.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 14 Nov 78, the applicant submitted a request for separation due to his marital problems and the separation from his family which caused extreme hardship and a severe impact on his ability to perform his duties.

On 14 Nov 78, his commander recommended his request for separation be accepted noting he had spoken to the applicant on several occasions about his marital problems and the effect they had on his job performance and concluded his situation would not improve.

On 20 Dec 78, the discharge authority approved his request for separation under the provisions of AFR 39-10, *Separation Upon Expiration of Term of Service, for convenience of Government, Minority, Dependency and Hardship*, paragraph 3-8(o).

On 29 Jan 79, DD Form 214, *Report of Separation from Active Duty*, reflects the applicant was honorably discharged in the grade of sergeant (E-4) after serving four years, six months, and eight days of active duty. He was discharged with a separation code of "KND" which denotes "Miscellaneous-General Reasons."

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

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 25 Jul 18, the Under Secretary of Defense for Personnel and Readiness issued supplemental guidance, known as the Wilkie Memo, 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 Memo.

On 4 Apr 24, the Under Secretary of Defense for Personnel and Readiness issued a memorandum, known as the Vazirani Memo, to military corrections boards considering cases involving both liberal consideration discharge relief requests and fitness determinations. This memorandum provides clarifying guidance regarding the application of liberal consideration in petitions requesting the correction of a military or naval record to establish eligibility for medical retirement or separation benefits pursuant to 10 U.S.C. Section 1552. It is DoD policy the application of liberal consideration does not apply to fitness determinations; this is an entirely separate Military Department in determining whether, prior to "severance from military service," the applicant was medically fit for military service (i.e., fitness determination). While the military corrections boards are expected to apply liberal consideration to discharge relief requests seeking a change to the narrative reason for discharge where the applicant alleges combat- or military sexual trauma (MST)-related PTSD or TBI potentially contributed to the circumstances resulting in severance from military service, they should not apply liberal consideration to retroactively assess the applicant's medical fitness for continued service prior to discharge in order to determine how the narrative reason should be revised.

Accordingly, in the case of an applicant described in 10 U.S.C. Section 1552(h)(l) who seeks a correction to their records to reflect eligibility for a medical retirement or separation, the military corrections boards will bifurcate its review.

- First, the military corrections boards will apply liberal consideration to the eligible Applicant's assertion that combat- or MST-related PTSD or TBI potentially contributed to the circumstances resulting in their discharge or dismissal to determine whether any discharge relief, such as an upgrade or change to the narrative reason for discharge, is appropriate.

- After making that determination, the military corrections boards will then separately assess the individual's claim of medical unfitness for continued service due to that PTSD or TBI condition as a discreet issue, without applying liberal consideration to the unfitness claim or carryover of any of the findings made when applying liberal consideration.

On 22 Oct 24, Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit F).

AIR FORCE EVALUATION

The AFRBA Psychological Advisor completed a review of all available records and finds insufficient evidence to support the applicant's request for the desired changes to his record. There is insufficient evidence to demonstrate the applicant was not fit for service at the time of his discharge. The applicant's performance ratings were consistently seven or greater out of nine, indicating better than adequate performance and in some cases exemplary performance. This includes a performance evaluation with a thru date one month before his separation date. He was promoted throughout his four years of service to the grade of staff sergeant, indicating good performance. While he was hospitalized for a suicide attempt, he was released and returned to work, being released for full duty. While he was diagnosed with mental health conditions while in the military, there is insufficient evidence to suggest he was not able to perform the duties of his office, grade, rank, and rating. Being diagnosed with a mental health condition and receiving mental health treatment does not automatically render a condition as unfitting. More information is required to determine unfitness such as being placed on a permanent duty limiting condition (DLC) profile for a mental health condition, being deemed not worldwide qualified (WWQ) due to a mental health condition, or impact or interference of the condition on the ability to reasonably perform military duties in accordance with his office, grade, rank, or rating. These designations were absent from his records.

It appears the only reason the applicant was separated from the military was because he requested to be released early due to marital issues and was not able to cope with being away from his family. The applicant contends on his application, he was involuntarily separated. There is no evidence of this in his military records. Several documents indicate the applicant asked for an early release, it was endorsed by the chaplain and command and was later approved. Likewise, there is no evidence he should have been referred to a Medical Evaluation Board (MEB). The applicant had mental health evaluations that determined he was fit for duty from a psychological perspective. It was consistently determined on his physical capacity/stamina, upper extremities, lower extremities, hearing and ears, eyes, and psychiatric (PULHES) scale that he was S-1, indicating he was fit for duty from a psychological perspective. There is insufficient evidence to suggest his mental health conditions were caused by or exacerbated by his military service. The applicant

himself contends he has been mentally ill his entire life. His diagnoses, while he was in the military, suggest they are related to his inability to cope with the separation from his wife and family. A trend that continued after his military separation, which is demonstrated in his self-authored statement (undated). There is insufficient evidence to suggest his mental health condition was permanently aggravated by his military service or that it was accelerated by his military service. It appears to be the natural progression of his mental health issue, regardless of his military service.

The applicant was denied service connection by the DVA on two separate occasions, for any mental health condition. In order to be separated for a medical disability, the military has a process that begins with entry into the Integrated Disability Evaluation System (IDES). Referral to this system requires a designation of unfitness. A condition is considered unfitting when it results in one or more of the following: (1) a permanent physical profile, (2) a determination that the identified condition fails to meet military medical retention standards, and/or (3) a finding that the identified medical condition renders the service member unable to perform the duties required of their Air Force Specialty Codes (AFSC) or grade. Whenever there is a disability, it is necessary to compare the nature and degree of disability present with the requirement of the duties the service member may reasonably be expected to perform because of their office, grade, rank, or rating. In the applicant's case, there is no evidence of the applicant receiving a permanent physical profile while on active duty for any psychological issues. There is no indication the applicant failed to meet military retention standards while on active duty. Finally, there is no evidence the applicant suffered from a psychological condition which rendered him unable to meet the requirements of his AFSC. In short, the applicant's military record indicates he did not suffer from an unfitting mental health condition.

The applicant contends he is concerned he will not be able to seek mental health treatment when he is released from prison for attempted 2nd-degree murder. The applicant was discharged from the military with an honorable discharge and should be able to access medical and psychiatric services from the DVA when he is released from prison. Liberal consideration is not applied to the applicant's petition because this policy does not apply to medical separation/retirement requests.

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 Oct 23 for comment (Exhibit D), and the applicant responded on 10 Sep 24. In his response, the applicant contends his so-called voluntary request for separation was involuntary and was obtained under duress due to his commander's coercive acts to force him to sign paperwork and due to his commander not following proper regulations to determine whether he was unfit or unsuitable for continued military service. Only a medical treatment facility commander or attending medical officer can make a determination of unfitness or unsuitability for continued service. If a member does not meet medical fitness standards, the member is referred to the MEB. Instead, his commander made his own determination he was unfit and unsuited for military service and used coercion to force the

discharge. Even though the advisory opinion states his last two EPRs were rated 8 out of 9, he submits his promotion test results which show he did not pass due to his degraded condition with short-term memory loss and lack of focus. If his mental state did not affect his duties, why was he admitted and medically evaluated. His EPRs were purposely "white-washed" to cover any possible interpretation he was unfit. Furthermore, the fact that his PULHES has an S-1 rating does not mean he did not suffer from PTSD as it is a known fact all of our veterans suffering from PTSD were given this rating. As stated in the Kurta Memo, mental health conditions were far less understood during the period he was in service, and it is not unreasonable to consider he was misdiagnosed or his symptoms were not recognized. The advisory opinion is misleading when it states he did not have any post-service mental health treatment. He did not know he was mentally ill until 1998 which resulted in his conviction and imprisonment for the past 26 years. He informed the Board, the DVA possessed all of his mental health records and two mental health evaluations were conducted by the DVA. He made attempts to obtain these records but was unsuccessful and the Board should make all reasonable efforts to obtain these records. The advisory opinion writer made no attempt to obtain these records and opined his denial of disability benefits by the DVA without looking at his psychological evaluation was proof he had no unfit mental health condition. The applicant's new DVA decision, dated Jul 24, found his mental illness of separation anxiety disorder was aggravated by his remote tour of duty and was therefore service connected. Furthermore, liberal consideration does apply to his request, he is not asking for a medical retirement, he is asking for his narrative reason be changed to medical for mental illness. Liberal consideration applies not only to discharge upgrades but also to requests for narrative reason changes.

The Board should request the mental health records and evaluations from the Evidence Intake Center of the DVA and the DVA Rating Decision of Jul 24; assign another unbiased psychological advisor to review the entire record under the guidelines established under Secretary of Defense A.M. Kurta's Memorandum; and consider all pertinent materials along with this submission, the additional evidence submitted, and the Affidavit of Flashback submitted with this response to make a determination to correct his narrative reason for discharge from miscellaneous reasons to medical for mental illness consider whether any further relief should be granted in order to ensure fundamental fairness and in the interest of justice.

The applicant's complete response is at Exhibit E.

FINDINGS AND CONCLUSION

1. The application was not 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. It appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. Additionally, the Board concurs with the rationale and recommendation of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. Specifically, the

Board finds he did not have any unfitting mental health conditions to be referred to the Medical Evaluation Board (MEB) for a medical separation nor was his mental health condition the cause for his behavior issues, rather it was his marital problems. The mere existence of a mental health condition does not automatically determine unfitness and eligibility for a medical separation. The applicant's military duties were not degraded due to any known medical or mental health conditions. A Service member shall be considered unfit when the evidence establishes the member, due to physical or mental health disability, is unable to reasonably perform the duties of his or her office, grade, rank, or rating. 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 or near the time of separation and not based on post-service progression of disease or injury. The Board notes the applicant's desire to have his narrative reason changed to "Medical for Mental Illness" however, there is no separation code and corresponding narrative reason for this annotation. Standardized separation program designator (SPD) codes and their cleartext are developed by the Undersecretary of Defense for Personnel and Readiness (OUSD P&R) for DoD-wide use and are not free text for whatever the applicant or service wishes to convey. The only way to annotate the applicant was separated due to a mental illness is to consider the applicant for a medical separation due to an unfit mental health diagnosis at or near the time of his discharge to which liberal consideration would not apply. Additionally, the applicant is asking the Board to obtain his mental health records and current DVA ratings; however, per DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR),* applicants have the burden of proof for providing evidence in support of their claim. The Board is not an investigative body, and it is not their responsibility to obtain evidence to support or refute an applicant's claim. Lastly, the applicant contends liberal consideration applies to his case because PTSD was misunderstood during the period he was in service, and it is not unreasonable to consider he was misdiagnosed, or his symptoms were not recognized. Based on the 4 Apr 24 memorandum from the Under Secretary of Defense for Personnel and Readiness, known as the Vazirani Memo, stating boards should not apply liberal consideration to retroactively assess the applicant's medical fitness for continued service prior to discharge in order to determine how the narrative reason should be revised; the Board finds the applicant's request for a medical retirement to be considered under liberal consideration is not warranted. Therefore, the Board recommends against correcting the applicant's records. The Board also notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by Section 1552 of Title 10, U.S.C., and DAFI 36-2603. The Board does not find it in the interest of justice to waive the three-year filing requirement and finds the application untimely.

RECOMMENDATION

The Board recommends informing the applicant the application was not timely filed; it would not be in the interest of justice to excuse the delay; 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 DAFI 36-2603, paragraph 2.1, considered Docket Number BC-2022-02670 in Executive Session on 20 Dec 23 and 29 Oct 24:

Work-Product Panel Chair
Work-Product Panel Member
Work-Product 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 21 Sep 22.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 14 Aug 23.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 25 Oct 23.
Exhibit E: Applicant's Response, w/atchs, dated 10 Sep 24.
Exhibit F: Letter (Liberal Consideration Guidance), SAF/MRBC, dated 22 Oct 24.

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.

11/7/2024

Work-Product

Board Operations Manager, AFBCMR
Signed by: USAF