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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2022-02727

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His DD Form 214, *Certificate of Release or Discharge from Active Duty*, be changed to reflect a Medical Retirement.

APPLICANT'S CONTENTIONS

During his Physical Evaluation Board (PEB) he was rated 0 percent for his bilateral plantar fasciitis, which he incurred in a combat zone. After discharge, the Department of Veterans Affairs (DVA) rated his condition at 40 percent, which would have given him a full retirement. He had mental health issues, including Post-Traumatic Stress Disorder (PTSD), as well that were not addressed during his discharge.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 16 Mar 11, AF IMT 618, *Medical Board Report*, indicates the applicant was referred to the Informal Physical Evaluation Board (IPEB) for degenerative lumbar disc disease of the lumbar spine.

On 5 Apr 11, AF Form 356, *Informal Findings and Recommended Disposition of USAF Physical Evaluation Board*, indicates the applicant was found unfit due to his medical condition of low back pain due to degenerative disc disease and recommended Discharge with Severance Pay (DWSP) with a disability rating of 20 percent.

On 21 Apr 11, AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, indicates the applicant did not agree with the findings and recommended disposition of the board and requested a formal hearing.

On 8 Jun 11, AF Form 356, *Formal Findings and Recommended Disposition of USAF Physical Evaluation Board*, indicates the applicant was found unfit for further military service due to his medical condition of low back pain and plantar fasciitis and recommended DWSP with a combined disability rating of 20 percent. The board also finds his low back pain condition was first reported while serving in the combat zone but neither condition is combat-related.

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POC: SAF.MRBC.Workflow@us.af.mil

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On 9 Jun 11, AF Form 1180, indicates the applicant agreed with the findings and recommended disposition of the board.

On 30 Nov 11, DD Form 214, reflects the applicant was honorably discharged in the grade of senior airman (E-4) after serving 5 years and 10 days of active duty. He was discharged, with a narrative reason for separation of “Disability, Severance Pay, Combat-Related.”

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 13 Apr 23, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit F).

Department of the Air Force Instruction (DAFI) 36-3211, *Military Separations*, describes the authorized service characterizations.

Honorable. The quality of the airman’s service generally has met Department of the 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.

AIR FORCE EVALUATION

AFPC/DPFDF recommends denying the application. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice during the

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Disability Evaluation System (DES) processing. Award of a disability rating for a new medical condition or upgrade of a rating by the DVA after separation does not warrant change to the original DES ratings or disposition after the fact.

The purpose of the DES is to maintain a fit and vital force. Disability law and policy allows the Secretary of the Air Force to remove from active duty those who can no longer perform the duties of their office, grade, rank, or rating and ensure fair compensation to members whose military careers are cut short due to a service-incurred or service aggravated physical disability. Per AFI 36-3212, *Physical Evaluation for Retention, Retirement and Separation*, the Air Force, and the Department of Veterans Affairs (DVA) disability systems operate under separate laws. Under the Air Force system (Title 10, United States Code [U.S.C.]), the Physical Evaluation Board (PEB) must determine whether an airman's medical condition renders them unfit for continued military service relating to their office, grade, rank, or rating. To be unfitting, the condition must be such that it alone precludes the member from fulfilling their military duties. The PEB then applies the rating best associated with the level of disability at the time of disability processing (a snapshot in time). That rating determines the final disposition (discharge with severance pay, placement on the temporary disability retired list, or permanent retirement) and is not subject to change after the service member has separated. Under the DVA system (Title 38, U.S.C), the member may be evaluated over the years and their rating may be increased or decreased based on changes in the member's medical condition at the current time. However, a higher rating by the DVA "based on new and/or current exams conducted after discharge from service" does not warrant a change in the total compensable rating and final disposition assigned under the DES at the time of the member's separation.

The complete advisory opinion is at Exhibit C.

The AFRBA Psychological Advisor completed a review of all available records and finds insufficient evidence has been presented to support the applicant's request to find his mental health condition as unfitting and ratable. The applicant was never diagnosed with PTSD during service. He was suspected to have symptoms of this condition but due to his suspiciousness and uncooperative behaviors, his military providers were deprived of being able to fully assess him for this condition. His mental health treatment and evaluation were completely voluntary. The symptoms he did report and disclosed to his primary care manager (PCM) and mental health provider did not meet diagnostic criteria for PTSD but for adjustment disorder with Mixed Anxiety and Depressed Mood or variations of this adjustment disorder. His service treatment records do not support he had any unfitting mental health conditions meeting criteria to be referred to the MEB/DES for a potential medical discharge. Therefore, the Psychological Advisor finds insufficient evidence to support his request to find his mental health condition to include PTSD as unfitting and would provide to him an additional rating to receive full medical disability retirement.

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 contends he had numerous other health issues that were not addressed but was later service-connected by the DVA which included his mental health condition. He claimed at the time

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of discharge, his condition was labeled as an adjustment disorder that was clearly PTSD and he later came to accept his condition.

2. Did the condition exist or experience occur during military service?

There is no evidence he had PTSD during service. He reported experiencing increased anxiety since his return from deployment and reported he experienced anxiety and depressive symptoms from his deployment experiences. He was given a diagnosis of adjustment disorder with Mixed Anxiety and Depressed Mood (and ADHD by history) by his mental health provider and PCM during service. This diagnosis of adjustment disorder was supported by his evaluation from a DVA mental health provider in Oct 11 during his terminal leave and before his official discharge from service. In Jan 13, about over a year post-discharge, a different DVA mental health provider had also given him a diagnosis of adjustment disorder. He was not diagnosed with PTSD by a DVA provider until Dec 13, two years post-discharge.

3. Does the condition or experience excuse or mitigate the discharge?

The applicant's mental health condition to include PTSD never elevated to potentially unfitting meeting criteria to be referred to the Medical Evaluation Board (MEB)/DES for a potential medical discharge or retirement. He was never placed on a duty limiting condition (DLC) profile for his mental health condition, never deemed not worldwide qualified (WWQ) 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 by his commander. 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 D.

The AFBCMR Medical Advisor reviewed all available records and finds insufficient evidence to support the applicant's request to change his discharge outcome to reflect a medical retirement. A post-service DVA rating is not synonymous or equivalent to the military's disability evaluation near the time-of-service separation. The burden of proof is placed on the applicant to submit evidence to support his request. The evidence he did submit was assessed to not support his request for a finding of or granting a medical retirement. Despite the formal PEB (FPEB) citing an atypical (not incorrect, but atypical) coding scheme for bilateral plantar fasciitis, the final medical decision and overall separation process was appropriately performed. The FPEB conducted itself without error and justly rated the applicant's bilateral plantar fasciitis condition given the physical findings near separation.

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board emailed a copy of the AFBCMR Medical and AFRBA Psychological advisory opinions to the applicant on 13 Apr 23 for comment (Exhibit F), and the applicant replied on 8 May 23. In his response, the applicant contends the initial diagnosis of an adjustment disorder upon returning from deployment does not adequately represent the experiences he had faced and the consequences

he continues to endure as a result of his deployment in 08. During his deployment, he faced numerous life-threatening events that contributed to his PTSD. He has not received proper recognition for his service and the damage it has caused him. The denial of his PTSD claim has only added to the struggle of maintaining meaningful relationships and adjusting to civilian life. His inability to connect emotionally with others, the numbness he feels inside, and the constant struggle to relate to normal experiences are all direct results of the traumatic experiences he endured during his deployment.

The applicant's complete response is at Exhibit G.

The Board sent a copy of the AFPC/DPFDF advisory opinion to the applicant on 31 May 23 for comment (Exhibit H), but has received no response.

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. The Board concurs with the rationale and recommendation of AFPC/DPFDF and the AFBCMR Medical Advisor and finds the preponderance of the evidence does not substantiate the applicants' contentions. In addition, the Board concurs with the rationale of the AFRBA Psychological Advisor. The Board took note of the applicant's disability ratings from the DVA but did not find this evidence compelling to warrant relief. 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 time of separation and not based on post-service progression of disease or injury to which the DVA can offer compensation. Therefore, the Board recommends against correcting the applicant's records.

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 DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2022-02727 in Executive Session on 26 Jul 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 11 Oct 22.

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Exhibit B: Documentary Evidence, including relevant excerpts from official records.

Exhibit C: Advisory Opinion, AFPC/DPFDF, w/atchs, dated 14 Nov 22.

Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 27 Mar 23.

Exhibit E: Advisory Opinion, AFBCMR Medical Advisor, dated 10 Apr 23.

Exhibit F: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 13 Apr 23.

Exhibit G: Applicant's Response, w/atchs, dated 8 May 23.

Exhibit H: Notification of Advisory, SAF/MRBC to Applicant, dated 31 May 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.

2/5/2024

Work-Product

Board Operations Manager, AFBCMR

Signed by

Work-Product