



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-03184

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. His DD Form 214, *Certificate of Release or Discharge from Active Duty*, be corrected to reflect a Medical Retirement for Generalized Anxiety Disorder (GAD) and/or Post-Traumatic Stress Disorder (PTSD) with a 30 percent or higher disability rating.
2. Removal of Personality Disorder from his DD Form 214 and all military records.

APPLICANT'S CONTENTIONS

The diagnosis of "Other Specified Personality Disorder, Mixed Personality Features" is not a definitive diagnosis and was erroneous and not in accordance with (IAW) AFI 36-3208, *Administrative Separation of Airmen*. He was improperly diagnosed with a personality disorder; it was made by an unlicensed provider and was "rubber stamped" by a psychologist; it was confirmed by another psychologist when testing did not confirm a personality disorder and the diagnosis is contrary to the Department of Veterans Affairs (DVA) diagnosis. His diagnosis was not consistent with the criteria in the Diagnostic and Statistical Manual (DSM) of Mental Disorders. Upon discharge, the DVA diagnosed him with General Anxiety Disorder (GAD) with a 30 percent disability rating and later reevaluated him and diagnosed him with PTSD with a 70 percent disability rating which were found to be service-connected. He should have been processed through the disability evaluation system (DES) and placed on the Temporary Disability Retired List (TDRL) then subsequently retired for his service-connected GAD and PTSD because his mental health conditions significantly interfere with the performance of duties appropriate to his office, grade, rank, or rating.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

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On 15 Mar 16, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFPD 36-32, *Military Retirements and Separations* and AFI 36-3208, paragraph 5.11.9.6. The specific reasons for the action were:

- a. On 20 Nov 15, according to the Mental Health Evaluation Memorandum, based upon the results of a clinical interview and collateral information, the applicant was diagnosed with Other Specified Personality Disorder, Mixed Personality Features. The applicant was also assessed for the presence of PTSD and was determined he did not meet the criteria for PTSD or any other conditions that would meet the criteria for a Medical Evaluation Board (MEB).
- b. On 26 Feb 16, according to the Mental Health Evaluation Memorandum, the Staff Psychologist concurred with the diagnosis and recommendation for administrative separation based on administration of psychological testing, additional collateral contacts, diagnosis interview and a thorough review of records.
- c. On 9 Mar 16, according to a Staff Psychologist memorandum, the applicant's mental health condition of other specified personality disorder, mixed personality features, was found to be considered an unsuiting condition per AFI 36-3208 paragraph 5.11.9. He received disciplinary action based on behaviors that are directly related to his mental health condition. His mental health condition caused interpersonal and communication difficulties to the point they adversely impacted the Air Force mission.

On 23 Mar 16, the discharge authority directed the applicant be discharged for Mental Disorders-Other Disorders with an honorable service characterization without the offer of probation and rehabilitation.

On 30 Mar 16, the applicant received an honorable discharge. His narrative reason for separation is "Mental Disorder (Other)." He was credited with three years and five months of total active service.

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

APPLICABLE AUTHORITY/GUIDANCE

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?

AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request for a medical disability retirement. The Psychological Advisor finds the applicant was properly diagnosed with a personality disorder that meets all the criteria of the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5). While the initial diagnosis was made by an unlicensed provider, she was supervised by a licensed clinical psychologist that reviewed, and agreed with the treatment, documentation and diagnosis.

Although the DVA diagnosed the applicant post-discharge with PTSD and GAD, there is no evidence to suggest either of these conditions existed to any degree that would cause functional limitations. As part of the administrative separation process, he had already been diagnosed with a personality disorder, an unsuiting, but not an unfitting condition. He was evaluated for PTSD and other mental health conditions, and it was determined there was no evidence he met diagnostic criteria for PTSD or any other condition (e.g., Traumatic Brain Injury) that would require referral to a MEB for administrative adjudication. The Psychological Advisor finds his personality disorder was the primary condition for his difficulties in the military, which made him unsuiting. His performance reports indicate he was fit for duty and could perform the duties of his office, grade, rank, and rating. According to policy, one gets entered on the Temporary Disability Retired List (TDRL) when a condition was found unfitting, and the condition is not stable for permanent retirement by recommendation of the Physical Evaluation Board (PEB). The applicant did not have any unfitting condition that would meet criteria for a referral to the PEB and therefore, he did not meet the requirement to be entered on the TDRL.

Per the DSM, factors that can contribute to the development of a personality disorder include genetics, environment, childhood trauma (including real and perceived abandonment), high

reactivity, and verbal abuse. The providers that diagnosed him with a personality disorder considered his childhood development history, along with current symptoms to properly diagnose him with a personality disorder during his time in service. While childhood experiences do not guarantee a person will develop a personality disorder, it sets up conditions favorable for one to develop.

Liberal consideration is not appropriate to be applied to the applicant's petition because this policy does not apply to medical discharge/retirement requests. The Psychological Advisor finds the applicant is the victim of an error or injustice an error. The potential stigma of "Personality Disorder" listed on his DD Form 214 is sufficient to warrant a change to his records. His Narrative Reason should be corrected to reflect "Condition, Not a Disability."

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 counsel on 1 Jun 23 for comment (Exhibit D), and the applicant replied on 20 Jun 23. On behalf of the applicant, counsel, contends liberal consideration should be applied to their request. Counsel cites several Federal court cases that support the application of liberal consideration for individuals seeking a medical retirement based on PTSD. On behalf of the applicant, counsel, also contends the Air Force and AFRBA Psychological Advisor ignored the two in-service traumatic events the applicant experienced which led the DVA to diagnose him with PTSD. A delayed diagnosis of PTSD is not uncommon and is often misdiagnosed. The Air Force nor the Psychological Advisor considered whether PTSD potentially contributed to the applicant's discharge.

The applicant's complete response is at Exhibit E.

ADDITIONAL AIR FORCE EVALUATION

Based on a review and consideration of the legal counsel's rebuttal, the AFRBA Psychological Advisor continues to find insufficient evidence has been presented to support the applicant's request for a medical discharge for his mental health condition. The applicant had an unsuited mental health condition meeting the criteria for an administrative discharge. His mental health condition did not meet the requirements of an unfitting condition. The Psychological Advisor continues to assert the applicant did not have PTSD during his military service or at discharge. His record demonstrated he was evaluated for PTSD and did not meet the criteria during his military service. It is noted in his DVA record, after his military service, his symptoms were determined to meet the criteria for a PTSD diagnosis and were a progression of his earlier symptoms. His in-service mental health providers documented these symptoms at the time; however, he did not meet the DSM criteria for PTSD. Since he did not meet the criteria for PTSD or GAD during service, nor did he have a mental health condition that was unfitting, there was no reason to initiate a MEB. There is no evidence to support the applicant meets the requirements to be placed on TDRL. According to policy, one gets placed on the TDRL when a condition was

found unfitting and the condition is not stable for permanent retirement by recommendation of the PEB.

To give the applicant the benefit of liberal consideration despite his request not covered under this policy, the following are responses to the four questions from the Kurta Memorandum from information available from his records for review:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?

The applicant and his legal counsel are requesting a medical discharge or retirement for his mental health condition of PTSD. They disputed his mental health diagnosis and discharge for having an unsuiting personality disorder. They cited his post-service mental disorder diagnosis, treatment, and service connection from the DVA for PTSD as reasons to grant his request for a medical discharge or retirement.

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

The applicant was never diagnosed with PTSD during service. He was consistently diagnosed throughout his treatment with personality disorders and with other problems with psychosocial stressors. An outside provider diagnosed him with adjustment disorder with anxiety. He was evaluated by numerous duly qualified mental health providers during service and providers consistently assessed his personality disorder, which was determined to be the primary condition influencing his behaviors. He was diagnosed with PTSD after he was discharged from military service.

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

The applicant's personality disorder was identified to be his primary mental health condition. This is an unsuiting mental health condition and was the reason for his discharge. There is no evidence of an error or injustice with his personality disorder diagnosis or discharge for this condition. There is no evidence the applicant had any unfitting mental health condition including PTSD during military service that would meet the criteria for a referral to the MEB. His mental health condition of PTSD which was diagnosed by the DVA after his military service does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since the applicant did not have any unfitting mental health condition during his military service including PTSD that would provide him with a medical discharge or retirement, his PTSD which was diagnosed by the DVA after his military service, does not outweigh his original discharge. Again, he had an unsuiting mental health condition of a Personality Disorder that was determined to be his primary mental health condition.

The complete advisory opinion is at Exhibit F.

APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

The Board sent a copy of the additional advisory opinion to counsel on 13 Sep 23 for comment (Exhibit G), the applicant replied on 21 Sep 23. On behalf of the applicant, counsel, contends the

Psychological Advisor failed to consider the opinion of the diagnosing DVA Psychologist, that states the applicant met DSM-5 criteria for PTSD due to witnessing two separate traumas while serving in the military. On behalf of the applicant, counsel, also contends the advisor failed to meaningfully consider all the evidence presented, specifically the opinion of a mental health expert submitted in the initial brief. Additionally, counsel contends the Psychological Advisor should have considered the applicant's declaration that he continues to experience a range of symptoms associated with PTSD.

The applicant's complete response is at Exhibit H.

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. It appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. The Board concurs with the rationale of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board took note of the traumatic experiences described by the applicant in his childhood and during his military career; however, finds he was properly evaluated and diagnosed with a Personality Disorder which caused his behavioral problems leading to his discharge. His military duties were not degraded due to an unfit mental health condition. 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 Board notes the DVA service-connected the applicant's mental health conditions of GAD and PTSD; however, a rating by the DVA, based on new and/or current exams conducted after discharge from service, does not warrant a change in the discharge outcome at the time of the member's separation. 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. The Board notes counsel's contention the applicant's diagnosis was made by an unlicensed provider; however, the Board finds the unlicensed provider was supervised by a licensed clinical psychologist who agreed with the diagnosis and finds no evidence to support the diagnosis was "rubber stamped." Liberal consideration was applied to the applicant's request; however, the Board finds the preponderance of evidence does not support a diagnosis of GAD or PTSD while in the service. He was found to have a condition that was unsuited for continued military service, personality disorders and other problems with psychosocial stressors, but not an unfitting condition meeting criteria to be processed through medical channels for a medical discharge nor be placed on the TDRL. 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 DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2022-03184 in Executive Session on 27 Sep 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 6 Dec 22.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 31 May 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Counsel, dated 1 Jun 23.
- Exhibit E: Applicant’s Response, w/atchs, dated 20 Jun 23.
- Exhibit F: Advisory Opinion, AFRBA Psychological Advisor, dated 12 Sep 23.
- Exhibit G: Notification of Advisory, SAF/MRBC to Counsel, dated 13 Sep 23.
- Exhibit H: Applicant’s Response, w/atchs, dated 21 Sep 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.

3/7/2024
Work-Product
Board Operations Manager, AFBCMR
Signed by Work-Product