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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00068

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COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. He be provided a fitness determination by the Physical Evaluation Board (PEB).
2. If found fit, he be provided a promotion and back pay and allowances.
3. If found unfit, he be given a medical disability retirement retroactive to the date of his mandatory retirement and his disabilities be found as a direct result of armed conflict as defined in 26 U.S.C. 104 combat-related determination.

APPLICANT'S CONTENTIONS

He suffered from undiagnosed Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI) since the Vietnam War which resulted in difficulties maintaining his military career. If he would have been diagnosed properly and treated, he would have been promoted to E-9 and potentially extended his service well beyond 20 years. He suffered memory loss, difficulty concentrating, anxiety, and depression due to his combat tour in Vietnam resulting in his security clearance being revoked, being disqualified from carrying a weapon, and being reassigned from his primary Air Force Specialty Code (AFSC). As Security Police, he was forced to retire due to his physical and psychological symptoms. Due to his medical condition, he was not given a medical examination to evaluate his conditions before he was forced to retire.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force senior master sergeant.

On 31 Aug 93, DD Form 214, *Certificate of Release or Discharge from Active Duty*, provided by the applicant, reflects he was honorably discharged in the grade of senior master sergeant (E-8) after serving 24 years, 6 months, and 29 days of total active duty. He was discharged, with a narrative reason for separation of "Voluntary Retirement – For Years of Service Established by Law."

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Controlled by: SAF/MRB
CUI Categories: Work-Product
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

APPLICABLE AUTHORITY/GUIDANCE

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 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 11 Dec 23, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit E).

AIR FORCE EVALUATION

The AFBCMR Medical Advisor recommends denying the application finding insufficient evidence to support the applicant's request for a PEB review resulting in either disability pay or a medical retirement. There was no evidence provided nor found in reviewed records the applicant had any non-mental health conditions that would be considered for processing via the DES. The burden 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 disability pay or a medical retirement. Although the applicant provided historical accounts of traumatic war-torn experiences while in service, nowhere did the Medical Advisor find the applicant suffered from a TBI. As taken solely from the applicant's historical recall, experiencing traumatic events may have occurred, but the Medical Advisor can find no injury to the brain attributable to said events.

The complete advisory opinion is at Exhibit B.

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. His service treatment records are not available for review nor did the applicant submit any of his service treatment records. He submitted a copy of his Air Force Commendation Medal he received for his service in Vietnam from 31 Oct 69 to 31 Oct 70, which would confirm his service in Vietnam; however, there are no records he had PTSD from his combat experiences in Vietnam during service. Moreover, the applicant's combat experiences in Vietnam had occurred during his prior period of active-duty service and it is not certain from the available records if he had a break in service. If he had a break in service, his mental health condition of PTSD from his combat experiences in Vietnam would be considered a prior service impairment, and no evidence was permanently aggravated beyond the natural progression of the illness or disease by his subsequent period of active-duty military service. He was diagnosed with PTSD for his combat experiences (and from his prior and post service traumatic experiences) by the Department of Veterans Affairs (DVA) 27 years after service. It appeared he had a delayed onset of PTSD causing him to meet diagnostic criteria for PTSD at a later time. Delayed onset of PTSD is not an uncommon occurrence. There are also no records or evidence he sustained a TBI during service. He claimed in his petition he experienced irritability, memory loss, difficulty concentrating, anxiety, and

depression, had his security clearance revoked, was disqualified from carrying a weapon, and was reassigned from his primary AFSC. There are no records or evidence of any of these symptoms or events in his limited records. There are no records his mental health condition including PTSD and TBI had impacted his ability to perform his military duties, led to career termination, and/or if any of these conditions were unfitting meeting criteria to be referred to the Medical Evaluation Board (MEB) for a potential medical discharge. There are no records he was placed on a duty limiting condition profile for his mental health condition, no records he was deemed not worldwide qualified due to his mental health condition, and no statements from his chain of command his mental health condition had interfered with his ability to reasonably perform his military duties in accordance with his office, grade, rank, or rating.

He claimed his undiagnosed PTSD and TBI brought an end to his military career and again, no evidence has been presented to substantiate his claims. The burden of proof is placed on the applicant to submit the necessary records and evidence to support his claims and requests. His available records were absent for all of the required markers for a medical discharge and thus, his request for a medical discharge based on his mental health condition could not be supported. For awareness, 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 development or progression of disease or injury.

The applicant reported to the DVA he retired from the Air Force after serving 25 years but claimed in his petition to the AFBCMR he was pushed out of the service before he reached the minimum service requirements to retire. His DD Form 214 shows he voluntarily retired from the service, and he met the required years of service established by law for retirement. The narrative reason for his separation on his DD Form 214 contradicts his contention. There is no evidence his mental health condition impacted or caused his voluntary retirement and discharge from service, and no evidence of an error or injustice with this discharge from a mental health perspective.

The Psychological Advisor opines liberal consideration is not appropriate to be applied to the applicant's petition due to his request for medical retirement, back pay, promotion, or combat-related pay. These requests are not covered under liberal consideration. However, the applicant is requesting liberal consideration as he had cited the Hagel Memorandum. Should the Board choose to apply liberal consideration to his petition as requested, the following are answers to the four questions from the Kurta Memorandum (updated and expanded guidance/version from the Hagel Memorandum) from the available records:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
The applicant contends he had undiagnosed PTSD and TBI and should have been medically discharged for these conditions.
2. Did the condition exist or experience occur during military service?
There is evidence the applicant was in Vietnam from 31 Oct 69 to 31 Oct 70. There are no service treatment records available to confirm he had PTSD, TBI, or symptoms of these conditions during

service. He was diagnosed with PTSD for his combat experiences in Vietnam, childhood trauma, and post-service trauma decades or 27 years after service.

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

The applicant's service treatment records are not available for review. From the available records, there is no evidence his mental health condition including PTSD and TBI were potentially unfitting meeting the criteria for a referral to the MEB for a medical discharge. There was no evidence his mental health condition had impacted or caused his voluntary retirement and discharge from service. His mental health condition does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since his mental health condition including PTSD and TBI do not excuse or mitigate his discharge, his mental health condition also does not outweigh his discharge providing him a medical discharge.

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 2 Oct 23 for comment (Exhibit D), 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 the AFRBA Psychological Advisor and the AFBCMR Medical Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. Specifically, the Board finds no evidence he had any unfitting medical or mental health conditions meeting criteria to be referred to the MEB for a potential medical discharge. The mere existence of a medical diagnosis does not automatically determine unfitness and eligibility for a medical separation or retirement. The applicant's military duties were not degraded due to PTSD or a TBI nor was evidence presented to show he was forced to retire due to these injuries. A Service member shall be considered unfit when the evidence establishes the member, due to a physical or mental disability, is unable to reasonably perform the duties of his or her office, grade, rank, or rating. 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 awarded 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 or near the time of separation and not based on post-service

progression of disease or injury. Furthermore, the Board applied liberal consideration to the applicant's contention his PTSD and TBI should have been found unfitting, however, does not find the evidence presented sufficient to conclude his mental health condition mitigates or outweighs his original discharge. The burden of proof is placed on the applicant to submit evidence to support his claim. As for the applicant's request to be found fit and be promoted to chief master sergeant with backpay and allowances, the Board finds the applicant was voluntarily retired with over 24 years of service and not due to any unfit medical condition nor was evidenced provided to show he was forced to retire due to his physical and psychological symptoms; therefore, the Board finds no reason to grant this portion of the applicant's request. Additionally, the Board did not find any of his medical or mental health conditions as combat-related as a direct result of armed conflict; while engaged in hazardous service; under conditions simulating war; or caused by an instrumentality of war. No direct causal relationship was established between combat-related duties and his medical/mental health conditions that demonstrated how or when hazardous service or instrumentality of war spurred the contended conditions. 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, United States Code, and Department of the Air Force Instruction 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. The Board does not find it in the interest of justice to waive the three-year filing requirement. Therefore, the Board finds the application untimely and 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 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 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-2023-00068 in Executive Session on 18 Jan 24:

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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 16 Dec 22.

Exhibit B: Advisory Opinion, AFBCMR Medical Advisor, dated 26 Sep 23.

Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 27 Sep 23.

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Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 2 Oct 23.
Exhibit E: Letter, SAF/MRBC, w/atchs (Liberal Consideration Guidance),
dated 11 Dec 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.

1/26/2024

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Board Operations Manager, AFBCMR
Signed by: USAF

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