Work-Product

UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2023-00187

COUNSEL: Work-Product

HEARING REQUESTED: YES

APPLICANT'S REQUEST

Remove a supposed suicide attempt from his service treatment record and change his reentry (RE) from 2C to a RE code that will allow him to reenlist.

APPLICANT'S CONTENTIONS

He has exhausted all other avenues and is coming to the Board so he can get back into the Air Force. While attending Basic Military Training (BMT), because he shared that he **MAY** have had ADHD as a kid; and while he was in the Delayed Entry Program (DEP) he took sleeping pills every other day to help him sleep; and that he may have attempted suicide when he was 13 but doesn't recall as it was over 10 years ago, he was discharged for fraudulent entry for failing to discuss his medical conditions to his recruiter.

The Air Force is not following their own rules. He was told that if the offense happened 10 or more years ago, then the condition or the offense is not considered a current problem. Not only that, but if he has not been on any type of medication for over 12 months, then the condition can be waived, Not only is he not currently on any medication for ADHD or insomnia, but he hasn't been on any for more than 12 months, even years. In addition, he has shown clinical stability for more than the required 12 months and he completed BMT without a single problem. He even has proof he is completely stable from his doctors. All told, this is evidence that he does not have ADHD, insomnia, and is fully stable to work.

He's tried getting a waiver in order to reenlist, but found it to be a losing battle. Unless this issue is resolved, with his current reentry code, 2C, he is effectively permanently banned from every branch of the military.

He wants nothing more than to serve his country.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman first class (E-3).

On 18 Oct 22, according to the *Mental Health Waiver Request for Military Service*, while a basic military trainee, who was a BEST Program referral, he was seen at the Behavioral Analysis Service (BAS) for a voluntary intake evaluation. During the appointment, the applicant reported the following disqualifying history per DoDI 6130.03:

a. Suicidality, suicide attempt.

b. Chronic Insomnia (use of meds to promote sleep 15 or more times over the past year).

c. ADHD if/with: a history of comorbid mental disorders.

On 19 Oct 22, according to memorandum, *Entry Level Separation Medical Waiver Decision*, from Headquarters, Air Education and Training Command, Air Force Recruiting Service, Chief, Accession Medical Waiver Division, the applicant did not disclose this medical history or condition and these conditions were not listed on the documents from the Military Entry Processing Station (MEPS). The memo states his present condition(s) does not meet medical waiver criteria for entry…thus, [applicant] is not granted a medical waiver at this time. It further states, [applicant] may return to the USAF training or duties at some future time after treatment and resolution of the condition (if desired).

On 21 Nov 22, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of DAFI 36-3211, *Military Separations*, Part 2, *Separation of Enlisted Members*, Section 7C, *Defective Enlistments*, paragraph 7.15, *Fraudulent Entry*.

On 23 Nov 22, the applicant provided a response to the discharge recommendation, requesting that he be allowed to continue in the Air Force, along with providing the following clarifications regarding his condition(s):

a. While he stated he had ADHD, and was on medication for it as a kid, he was never officially diagnosed with ADHD, he was only diagnosed with Tourette's and scarlet fever.

b. He had only been taking sleeping aids for more than 15 days just before joining the Air Force, and because of that, he was immediately marked as a Chronic Insomniac.

c. His suicide attempt was 13-14 years earlier and due to an abusive stepfather. He's a long way from that dark time and the furthest thing from his mind is doing anything rash to harm himself or others.

On 2 Dec 22, the Wing Staff Judge Advocate found the discharge action legally sufficient.

On 7 Dec 22, the discharge authority directed the applicant be discharged for fraudulent entry with entry level separation service characterization.

On 7 Dec 22, the applicant received entry level separation discharge. His narrative reason for separation is "Fraudulent Entry", his RE code is 2C, and he received no credit towards total active service.

On 04 Jan 23, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for his RE code to be changed to allow him to enlist in the Air Force or another branch of service.

On 12 Jun 23, the AFDRB concluded the discharge was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority and the applicant was provided full administrative due process.

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

APPLICABLE AUTHORITY/GUIDANCE

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.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request.

The applicant did not submit any new records that the AFDRB did not review that would overturn their decision. His military records did reflect that he did **not** disclose having a mental health history or condition or received treatment for his mental health condition prior to his service on his MEPS paperwork. This would suggest fraudulent reporting; the reason he was discharged.

He contends he does not have insomnia or ADHD and submitted records from his post-service providers. However, he was noted to be inconsistent with his reporting about his mental health condition and treatment. He informed the BEST program he was treated for ADHD from the ages of 8 to 12, and there was no mention of Tourette's Disorder. Contrary to his reports to BAS, he reported he was diagnosed with ADHD and Tourette's Disorder while he was in elementary school; was treated for both conditions with medication management; he was no longer diagnosed or taking medications for Tourette's Disorder after completing elementary school; stopped taking ADHD medication when he was 15 or 16 years old; had to repeat 11th grade for unspecified reasons; and typically received B and C grades in high school. On 14 Dec 22, which was about two months after his BAS evaluation and one week after his discharge, he informed his primary care provider (PCP) that he "might have" taken ADHD medications as a child but could not recall; was able to concentrate in high school; denied behavioral issues; received grades of A's and B's; and went to college. His PCP never reported, nor did he report, that he was diagnosed with ADHD but annotated that he had a history of Tourette's Disorder. On 15 Dec 22, a day after he met with his PCP, during his evaluation with the licensed clinical social worker (LCSW), the LCSW reported he believed he was diagnosed with Tourette's Disorder and ADHD during childhood; he was unsure if he took medication and believed he may have during childhood (age 12); believed he took medication for Tourette's Disorder and/or ADHD but did not require medication as an adult. A diagnosis of Tourette's Disorder was listed under the active problem lists of the evaluation report by the LCSW. On his application to the BCMR, he contends he was not on any medication for ADHD or insomnia since he was 13 years old. The applicant's numerous inconsistent reports make it difficult to decipher the exact condition he had and/or whether he could confidently remember if he had taken medications for ADHD or Tourette's Disorder prior to service. Despite these concerns and whether the medications were used to treat ADHD or Tourette's Disorder, he did take prescribed psychotropic medications for symptoms of a mental health condition because he was unable to manage them and needed assistance from the medications. He never denied not being prescribed or taking the medications prior to service and in fact, said in his petition he is not

currently taking any type of medication for ADHD or insomnia, had not taken any medication for more than 12 months, and these conditions had resolved. His PCP wrote a letter to confirm he was screened for ADHD and insomnia and was shown to be in normal health and he screened negative for ADHD and sleep problems during the evaluation with the LCSW. The modality or procedure in which he was screened for these conditions by these providers was not identified in the submitted records. Nevertheless, there are many reasons for his negative screenings such as he truly did not have ADHD or insomnia; did not have symptoms for any of these conditions at the time of the evaluation because symptoms may recur or have been resolved; or he could portray himself favorably as he was trying to receive medical clearance to be able to reenter the military. It is difficult to determine the actual reasons for the discrepant reporting. These two post-service providers, did however, report he had a history of Tourette's Disorder. The collective records suggested he had a mental health condition and received treatment prior to his military service and failed to disclose the information during MEPS processing. His military providers did not give him a diagnosis of ADHD but documented he had a history of ADHD based on self-reports. There is no evidence his mental health condition was erroneously documented in his military records.

He was also inconsistent with his reporting about his sleep issues. He reported to the BEST program that he had difficulties sleeping at night "most of the time" during the past year and started taking an over-the-counter sleep aid in Mar 22. He informed the BAS provider he had a history of sleep issues for the past 2-3 years; had taken Unisom every night for the past year; and while at BMT, he would wake up randomly on most nights but could fall back to sleep after 30 minutes to an hour. He denied having any sleep problems to the PCP and the LCSW. He did not dispute his military provider's reports that he had sleep problems or had taken sleeping pills in his personal statement and said this issue had been resolved. He did take issue with the military providers classifying his sleep problem as insomnia. It is noted that the applicant was not diagnosed with Insomnia Disorder by his military providers as they just documented he had this problem per his reports. Even if they had given him a formal diagnosis of Insomnia Disorder, his symptoms would have met the diagnostic criteria. According to the current Diagnostic and Statistical Manual of Mental Disorder, Fifth Edition, Text Revision (DSM-5-TR), the diagnostic criteria for Insomnia Disorder are dissatisfaction with the quantity or quality of sleep such as difficulty initiating and/or maintaining sleep or having an inability of returning to sleep; the sleep difficulty occurred at least three times per week; was present for at least three months; occurs despite adequate opportunity for sleep; was not attributable or related to another medical condition; and causes clinically significant distress or impairment in important areas of functioning. These criteria align with his reports to his military providers at the time and his condition caused significant distress to him that he had to take a sleep medication every night to sleep for two to three years. Insomnia may recur or resolve at different times and just because he does not have insomnia presently, does not mean he did not have insomnia in the past. As such, there is no evidence to support his claim that insomnia was incorrectly documented in his military records.

He also reported to his military providers he attempted suicide at the age of 12 by overdosing on 20 ADHD medication pills to "completely end the pain" and discussed in response to his discharge that he attempted suicide due to his stepfather's abuse; was fed up with dealing with this individual [stepfather]; and that he "wanted an out." He did not discuss his suicide attempt to his PCP or to the LCSW and it was reported he did not have any present suicidal ideation, intent, or plan. He coyly acknowledged his suicide attempt in his personal testimony and said, "*The suicide this is something that maybe happened when I was 13, I think*." He did not dispute or deny he had attempted suicide in the past. He explained the incident happened 10 years ago and claimed the information should not have been documented in his records per Air Force rules. This assumption is not accurate especially relating to safety concerns like a suicide attempt. All and any past safety concerns, including suicidal ideation and attempts, should be reported and documented in the records. The applicant's prior service suicide attempt is a serious concern which demonstrated he

had maladaptive behaviors and was unable to cope with a stressful situation. Even if he believes he does not have ADHD or insomnia presently, this significant history of a suicide attempt by medication overdose is enough to be disqualifying alone for military service.

His reported, consistent or inconsistent, history of mental health conditions or behaviors of ADHD, Tourette's Disorder, sleep problems/insomnia, and/or suicide attempt are all qualifying conditions per DoDI 6130.03, *Medical Standards for Military Service*. He attempted to obtain a waiver to be retained in the service and his conditions were assessed to be too serious for retention to meet the criteria for an approved waiver. There is no error or injustice identified with the procedure or decision that rendered that he had a disqualifying condition for military service. The applicant is requesting to remove information about his suicide attempt from his records as it happened over 10 years ago and this request could not be supported. He made this report to duly qualified and credentialed providers and their documentation of this history is within the scope of practice and for the purpose of evaluation. He did not effectively or compellingly demonstrate that their records were erroneous. He contends he is stable and his condition has resolved. This psychological advisor is not a waiver authority and could not make this determination. The AFDRB has addressed this problem as well and also identified they are not waiver authorities. He is also requesting an upgrade to his RE code to allow him to reenter the military. This request could not be supported because he was discharged under entry level separation for fraudulent entry and was furnished with a RE code of 2C with an uncharacterized character of service for serving less than 180 days of continuous active military service. The RE code is consistent with and in accordance with DAFI 36-3211. Therefore, there is no error or injustice identified with his RE code and discharge reason from service from a mental health perspective.

This psychological advisor concurs with the reason and rational of the AFDRB's responses to the four questions posed in the Kurta Memorandum as they were appropriate and reflective of his records. However, liberal consideration is again applied to his petition due to his contention of a mental health condition and as a de novo review with the BCMR. It is reminded that liberal consideration does not mandate an upgrade per policy guidance. As such, after reviewing the applicant's available records, this psychological advisor provides the following responses to the four questions from the Kurta Memorandum:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
The applicant contends he does not presently have ADHD or insomnia and his records of his suicide attempt when he was 13 years old should be removed because it occurred over 10 years ago. He believes he was incorrectly discharged for ADHD and insomnia based on a diagnosis from BAS.

2. Did the condition exist or experience occur during military service?
The applicant's military records revealed he disclosed to the BEST program and BAS provider during his military service a history of ADHD or Tourette's Disorder, insomnia/sleep problems, and had engaged in a suicide attempt by overdose prior to service.

3. Does the condition or experience actually excuse or mitigate the discharge?
The applicant had requested and was denied a waiver for having a prior service mental health history of suicidality, chronic insomnia, and ADHD with a history of comorbid mental disorders. These conditions were determined to be disqualifying per DoDI 6130.03. He failed to disclose his prior service mental health history on his MEPS paperwork which was the reason for the discharge. There is no error or injustice identified with the documentation in his military records and his reason for discharge from the 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 does not excuse or mitigate this discharge, his mental health condition also does not outweigh his original discharge. He was diagnosed with an entry level separation for not completing 180 days of continuous active service and his RE code is consistent with past and present regulations and policies. Also noted by the AFDRB, the applicant's discharge package/waiver decision stated, "This individual may return to USAF training or duties at some time after treatment and resolution of the condition (if desired)."

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 9 Jan 24 for comment (Exhibit D), but has received no response.

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 a victim of an error or injustice. The Board concurs with the rationale and recommendation of the Psychological Advisor and finds a preponderance of the evidence does not support the applicant's contentions. The applicant contends information about his suicide attempt should be removed from his records because it had happened over 10 years ago and he should receive a waiver for his ADHD condition. However, the Board disagrees. The Board notes the applicant's military records reflect he did not disclose having a mental health history or condition, or he had received treatment for a mental health condition prior to service on his Military Entrance Processing Station paperwork. Further, the Board notes that his military medical providers did not give him a diagnosis of ADHD but only documented he had a history of ADHD based on self-reporting by the applicant. As such, the Board finds no evidence his mental health conditions were erroneously documented in his military records. Additionally, while he attempted to obtain a waiver to be retained in the service, his conditions were assessed to be too serious to meet the criteria for a waiver and the applicant failed to submit any new records that would cause the Board to overturn the Discharge Board's decision. Therefore, the Board finds there is no error or injustice identified with the procedure or decision that was rendered that he had a disqualifying condition for military service and 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-2023-00187 in Executive Session on 17 Apr 24:

Work-Product 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 3 Jan 23.
Exhibit B: Documentary Evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, AFRBA Psychological Advisory, dated 8 Jan 24.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 9 Jan 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.

5/10/2024

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Board Operations Manager, AFBCMR
Signed by: USAF