

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2023-00614

XXXXXXXXXXXXXXXXXX

**COUNSEL:** XXXXXXXXXXXX

**HEARING REQUESTED:** YES

### APPLICANT'S REQUEST

His official military personnel record amended to reflect:

- a. In the Line of Duty determination for Post-Traumatic Stress Disorder (PTSD).
- b. Medical retirement for PTSD.
- c. Compensation for all pay, benefits, and entitlements due to retirement at onset of PTSD diagnosis.

### APPLICANT'S CONTENTIONS

He was not afforded an opportunity to go through the in line of duty (ILOD) determination process after requesting several times from the medical squadron. He received Department of Veterans Affairs (DVA) disability rating for PTSD in connection with military service. His unit did not comply with Department of the Air Force Instruction (DAFI) 36-2910, *Line of Duty (LOD) Determination, Medical Continuation (MEDCON), and Incapacitation (INCAP) Pay*, policy regarding the LOD process.

There is no evidence that an ILOD determination was investigated for him. There would be an AF Form 348, *Line of Duty Determination*, in his service treatment file showing an ILOD investigation was conducted. In accordance with DAFI 36-2910, if a servicemember requests an LOD, the command must investigate the injury or illness to determine if it is ILOD. There is no determination of findings in his medical service treatment record because it did not happen. The evidence shows he requested an ILOD determination from his command all the way up until he went to the Formal Physical Evaluation Board (FPEB). The FPEB cannot determine if an illness or injury is ILOD; therefore, the statement made by the FPEB is inadmissible and there is no determination of findings from either his command or the FPEB.

The DVA decided his PTSD is service-connected. He was medically disqualified for continued military service, without being afforded the ability to go through the ILOD determination process. He was forced to go through the Non-Duty DES [Disability Evaluation System] process because his unit denied his repeated requests for an LOD. He is requesting the Board review his service treatment record to discover that there was not an ILOD determination findings report and grant his request for a medical retirement based on reasonable doubt. He clearly suffers from disabilities connected to his military service.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a retired [State] Air National Guard technical sergeant (E-6) awaiting retired pay at age 60.

On 12 Sep 05, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant was furnished an honorable discharge, for the period 2-12 Sep 05, with Narrative

Reason for Separation: Completion of Required Active Service and Remarks: In Support of Hurricane Katrina.

On 26 Oct 05, the applicant completed the DD Form 2796, *Post-Deployment Health Assessment (PDHA)*, reporting his “health stayed about the same or got better.”

On 22 Jan 07, the applicant completed the DD Form 2900, *Post-Deployment Health Reassessment (PDHRA)*, reporting his health was “about the same as before I [he] deployed.”

On 16 Dec 14, according to AF Form 469, *Duty Limiting Condition Report*, the applicant was identified with a Non-Duty physical disqualification that must be processed through the Non-Duty Disability Evaluation System (DES) to continue his military service.

On 30 Dec 14, according to *Statement of Selection*, the applicant elected, “I desire to enter into the Disability Evaluation System (DES). I understand that my case is non-duty related and that it will be for a Fitness determination only.”

On 22 Jul 15, according to AF Form 469, the applicant completed MEB/FFD [Medical Evaluation Board/Fit For Duty] processing, was given an Assignment Limiting Code (ALC) of C3 [Assignment limited to specific installations based on medical need and availability of care], was found fit and was returned to duty with restrictions.

On 5 Feb 16, according to NGB/A1PS memorandum, the applicant was identified with a non-duty related physical defect or condition that renders him unfit for duty and requested entry into DES solely for a fitness determination in accordance with AFI 36-3212, *Physical Evaluation for Retention, Retirement and Separation*, Section 8E - *ARC Non-Duty Related Impairments*.

On 10 Feb 16, according to AFPC/DPFDI memorandum, the Informal Physical Evaluation Board (IPEB) found the applicant unfit to perform the duties of his office, grade, rank, or rating for the following diagnoses and DVA codes: DVA Codes: 9400 [Generalized Anxiety Disorder], 6602 [Asthma]; Diagnoses: Anxiety, Asthma; ART: Yes, Combat Related: No.

On 18 Feb 16, according to Selection of Rights – Non-Duty Related Fitness Determination, the applicant elected: “I elect to have my [his] case referred to the Formal Physical Evaluation Board (FPEB) solely for a fitness determination. I understand that if my case is non-duty related that it will be for Fitness only.”

On 26 Apr 16, according to AFPC/DPFDF memorandum, the FPEB found the applicant unfit to perform the duties of his office, grade, rank, or rating for the following diagnoses and DVA codes: DVA Codes: 9400, 6602; Diagnoses: Anxiety, Asthma; ART: Yes, Combat Related: No.

On 26 Apr 16, the applicant agreed with the recommendation of the FPEB and did not wish to rebut the findings.

On 30 May 16, the applicant was furnished an honorable discharge, with Authority and Reason: AFI 36-3209, Paragraph 3.14. Physical Disqualification, SPD: RBD [Sufficient Service for Retirement], and credited with 16 years total service for retired pay.

On 31 May 16, according to Reserve Order XXXXX, dated 17 May 16, provided by the applicant, he was assigned to the Retired Reserve section and placed on the USAF Reserve Retired List, with Reason: Retirement -15 to <20 Sat Svc-Med Disq, Elig for retired pay except for attainment of eligibility age.

On 9 Jun 17, ARPC/DPTT sent the applicant the standard Notification of Eligibility for retired pay (20-year letter), provided by the applicant, informing him that he has completed the required years under the provisions of Title 10 United States Code, Section 12731 (10 U.S.C § 12731) and is entitled to retired pay upon application prior to age 60.

On 8 Feb 23, according to DVA Rating Decision, provided by the applicant, service connection for PTSD was granted with an evaluation of 70 percent, effective 13 Jan 15.

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

## **AIR FORCE EVALUATION**

NGB/SGPS recommends denying the application. The civilian medical documents reference the applicant having PTSD symptoms, but there is no documentation indicating his PTSD was incurred in a duty status. No additional supporting documentation was located in the electronic health record or submitted by the applicant.

The applicant contended his PTSD is due to deployment to Louisiana and Mississippi in support of Hurricane Katrina Relief during the period 2-12 Sep 05. A medical note from his civilian provider, dated 4 May 21, indicates the applicant was engaging in a search and rescue mission, saw dead bodies and was shot at during his deployment. On the DD Form 2796, dated 26 Oct 05, the applicant indicated his health stayed about the same or got better during the deployment. He also indicated he did not feel he was in "great danger of being killed." He also selected the statement indicating his health was "about the same as before I deployed" on the DD Form 2900, dated 22 Jan 07. Additionally, he indicated on the PDHRA that he had no health concern/condition nor any persistent major concerns that he may have been exposed to or encountered while deployed. None of his Post-Deployment Health Assessments/Reassessments indicate he experienced a traumatic event while deployed.

In 2014, the applicant was seen and treated for anxiety and asthma, but there is no supporting documentation in either his electronic health record, or submitted by the applicant, that indicated when he was diagnosed with both conditions. His civilian provider treated him for anxiety, asthma and insomnia, which documentation indicated began while the applicant was in a non-duty technician status as he was having work performance-related issues. The conditions progressed to where the applicant was unable to perform the duties of his office, grade, or rank for his Drill Status Guardsman military position.

A fitness for duty evaluation was completed for his anxiety and asthma on 21 Jul 15, and he was returned to duty with an ALC-C3. His case was resubmitted for a re-look in Nov 15, and he was referred to the IPEB. The IPEB found he was unfit on 10 Feb 16 for chronic anxiety and asthma, with both conditions not related to military duty. On 29 Feb 16, the applicant elected to have his case referred to the FPEB, where he was found unfit to perform duties of his office, grade, rank or rating on 26 Apr 16. The applicant indorsed the FPEB fitness determination on 26 Apr 16, selecting, "I agree with the recommendation of the FPEB and do not wish to rebut the findings."

The DES can by law, under Title 10, United States Code (U.S.C.), only offer compensation for those service-incurred diseases or injuries which specifically rendered a member unfit for continued service and were the cause for career termination; and then only for the degree of impairment present at the "snapshot" time of separation and not based on future progression of injury or illness. The DVA on the other hand, operates under a different set of laws (Title 38, U.S.C.) with a different purpose and is authorized to offer compensation for any medical condition determined service incurred, without regard to, and independent of, its demonstrated or proven impact upon a service member's retainability, fitness to serve, or the length of time since

date of discharge. The DVA can also conduct periodic re-evaluations for the purpose of adjusting the disability rating awards (increase or decrease) over the lifetime of the veteran. The applicant currently has a DVA 70 percent service-connection rating for PTSD, effective 13 Jan 15.

The complete advisory opinion is at Exhibit C.

NGB/A1PS recommends denying the application. The submitted package was reviewed in its entirety. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice.

The applicant contended his PTSD is due to deployment to Louisiana and Mississippi in support of Hurricane Katrina Relief (2-12 Sep 05). NGB/SG reviewed the medical documents and found PDHA, dated 26 Oct 05, showed the applicant indicated his health stayed about the same or got better during the deployment. He also indicated he did not feel he was in "great danger of being killed." The applicant selected the statement indicating his health was "About the same as before I deployed" on the PDHRA, dated 22 Jan 07. The applicant also indicated on the PDHRA that he had no health concern/condition nor any persistent major concerns that he may have been exposed to or encountered while deployed. None of the applicant's Post-Deployment Health Assessments/Reassessments indicate the applicant experienced a traumatic event while deployed.

Furthermore, NGB/SGPA did a re-look in Nov 15, at which time he was referred to the IPEB for disposition. The IPEB found the applicant unfit on 10 Feb 16 for chronic anxiety and asthma; both conditions were not related to military duty. On 29 Feb 16, the applicant elected to have his case referred to the FPEB. The FPEB found the applicant unfit to perform the duties of his office, grade, rank, or rating on 26 Apr 16. The applicant endorsed the FPEB fitness determination memorandum on 26 Apr 16 selecting the statement, "I agree with the recommendation of the FPEB and do not wish to rebut the findings." Finally, the civilian medical documents reference the applicant as having PTSD symptoms, but there is no documentation indicating the applicant's PTSD was incurred in a duty status.

The complete advisory opinion is at Exhibit D.

## **APPLICANT'S REVIEW OF AIR FORCE EVALUATION**

The Board sent copies of the advisory opinions to the applicant on 17 Aug 23 for comment (Exhibit E), and the applicant replied on 17 Aug 23, 30 Aug 23, and 31 Aug 23. In his response, the applicant contended certain aspects warrant further consideration and clarification. While it is true his PDHA/PDHRA do not explicitly indicate experiencing trauma during his deployment, he would like to emphasize that PTSD symptoms can manifest gradually over time and may not be immediately apparent. The absence of documentation of a traumatic event does not necessarily negate the possibility that his condition developed due to cumulative stressors or other factors related to his service during that period.

He respects the decisions made by the IPEB and FPEB; however, he wants to bring to the Board's attention that his case was evaluated for chronic anxiety and asthma, not PTSD. These assessments do not fully address the potential impact of his service on the development of PTSD. PTSD can arise from a range of experiences, and it is plausible that his service, even without a single traumatic incident, contributed to the development of this condition. While there might not be explicit documentation of his PTSD being incurred in a duty status, it is worth considering the broader context in which his symptoms have been evaluated. The civilian medical professionals have diagnosed his condition based on their assessments of his history, including his military service. He contended he exhibited symptoms consistent with his PTSD diagnosis as early as 2005. The deterioration of his mental well-being caused by his deployment in support of

Hurricane Katrina rendered him incapable of sustaining his military service. Furthermore, if he had been promptly referred to the DES upon onset of his PTSD symptoms, he would have been eligible for a medical disability retirement from his military service.

Additionally, counsel, on behalf of the applicant, requested the Board disregard the recommendations contained in the advisory opinion(s). The choice to separate the applicant instead of facilitating a medical retirement constitutes an arbitrary and capricious misuse of authority and stands in stark disregard of the evident and undeniable causal correlation between his deployment experiences and the emergence of his underlying mental health condition. Before the Air National Guard initiated the process to discharge the applicant on the grounds of medical disqualification, it was incumbent upon his command to thoroughly review his medical records with the aim of potentially referring him to the DES for the purpose of a medical disability retirement. His PTSD symptoms were first conveyed in 2005 which led to a formal diagnosis of anxiety in 2006; however, despite his consistent endeavors, his pursuit of an LOD determination remained unfruitful.

In the recent instance of denial, the Board's determination rested on the applicant's PDHA and PDHRA which lacked evidence of a traumatic event during his deployment. This mode of evaluation overlooks the intrinsic dynamics of PTSD symptoms that can materialize gradually over time, eluding immediate recognition. The absence of overt documentation should not be misconstrued as negating the potentiality that his condition evolved as a consequence of cumulative stressors or other factors linked to his service over the deployment duration. In 2017, the Acting Undersecretary of Defense issued a directive to Discharge Review Boards and Boards for Correction of Military/Naval Records when veterans petition for discharge upgrades rooted in underlying mental health conditions. While the memorandum does not directly encompass cases where a service member petitions a Board for medical disability retirement, the policies espoused hold persuasive weight and should be pertinent to the present context. Importantly, the memorandum acknowledges the tendency for mental health conditions, such as PTSD, to go undiagnosed or to be diagnosed years after the fact. It is worth noting the applicant refrained from disclosing anxiety on his PDHA and PHHRA due to concerns about job security. At that juncture, the contemporary programs and societal comprehension of PTSD were not as developed as they are today. In support, counsel provided excerpts from Army Board for Correction of Military Records cases which considered the 2017 directive when considering requests for discharge upgrade.

The NGB decision in Jul 23, rested on the outcomes of the Nov 15 IPEB and Apr 16 FPEB. These boards deemed the applicant unsuitable due to chronic anxiety and asthma, asserting both conditions were disconnected from his military duty. However, their analysis appears incomplete evidenced by the absence of critical information within his medical records. There was no AF Form 348 or corresponding determination of findings in his medical record, underscoring the absence of an LOD investigation. The FPEB does not possess the authority to determine whether an illness or injury falls within LOD; thus, the statement posited by the FPEB lacks merit given the lack of evidence to substantiate a determination of findings from either his command or the FPEB itself. Although the IPEB/FPEB adjudged the applicant as unfit for military service, they should have concurrently arrived at the conclusion that his disabilities were not pre-existing and were significantly exacerbated by his service. Following the FPEB, the applicant diligently submitted post-board considerations, appealing for permission to retire from service based on his service-connected conditions, providing ample compelling evidence that warranted favorable resolution. Unfortunately, his request was arbitrarily denied by the approval authority.

The NGB concluded no indications of error or injustice were present due to the absence of documentation regarding occurrence of a traumatic event during deployment, referencing his PDHA and PDHRA. It is imperative to recognize his omission emanated from his apprehension

regarding potential consequences of divulging his struggles with mental health, which is a testament to the gravity of his mental health state during that juncture. The evident link between his deployment to Louisiana and the onset of his PTSD is undeniable. His presentation of PTSD symptoms in 2006 should have prompted an immediate referral to the DES. The failure to undertake this action breaches Air Force regulations. Had this lapse not occurred, the applicant would have rightfully been subject to a medical retirement from service.

The applicant's complete response is at Exhibits F-H.

## **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, to include the applicant's rebuttal, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationales and recommendations of NGB/SGPS and NGB/A1PS and finds a preponderance of the evidence does not substantiate the applicant's contentions. There is no evidence in the applicant's electronic health record or submitted by the applicant that indicates his PTSD or asthma were incurred ILOD. To the contrary, the applicant's PDHA and PDHRA indicate he had no medical/mental health concerns related to his deployment in support of Hurricane Katrina Relief. The civilian medical documents reference the applicant as having PTSD symptoms, but there is no documentation indicating the applicant's PTSD was incurred in a duty status. Additionally, the applicant was afforded due process via the IPEB and FPEB where he acknowledged the conditions were non-duty status related, and later, agreed with the FPEB unfit determination, electing not to rebut. 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)*. While the applicant asserts a date of discovery within the three-year limit, the Board does not find the assertion supported by a preponderance of the evidence. 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-2023-00614 in Executive Session on 20 Dec 23:

, 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 11 Feb 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, NGB/SGPS, dated 6 Jun 23.
- Exhibit D: Advisory Opinion, NGB/A1PS, dated 7 Jul 23.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 17 Aug 23.
- Exhibit F: Applicant's Response, w/atchs, dated 17 Aug 23.
- Exhibit G: Applicant's Additional Response, w/atchs, dated 30 Aug 23.
- Exhibit H: Counsel's Supplemental Response, w/atchs, dated 31 Aug 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.

X

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Board Operations Manager, AFBCMR