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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

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DOCKET NUMBER: BC-2023-01188

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. He be given a medical separation.
2. His unfit medical condition be found as combat-related, as a direct result of armed conflict as defined in 26 U.S.C. 104 combat-related determination.

APPLICANT'S CONTENTIONS

He became stressed when he saw someone dead and did not want to continue as a Mortuary Officer. He feared being stigmatized as a mental case and did not want to be processed through a Medical Evaluation Board (MEB) and found non-deployable. Due to hurricane Katrina, his family was displaced from their home which caused additional stress. All of these events occurred prior to his misconduct. He was diagnosed with an adjustment disorder five months after his discharge.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an honorably discharged Air Force captain (O-3).

On 20 Nov 06, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3206, *Administrative Discharge Procedures for Commissioned Officers*, paragraph 3.6.3 for drug abuse. The specific reason for the action was the nonjudicial punishment (NJP) he received on 30 Sep 06 for wrongful use of a controlled substance (marijuana) for which he received a forfeiture of \$2,620.00 of pay per month for two months of which the forfeiture in excess of \$2,120.00 per month was suspended until 29 Mar 07.

On 18 Dec 06, the Staff Judge Advocate found the discharge action legally sufficient and recommended the discharge process be initiated by signing the Show Cause Notification.

On 19 Dec 06, the Show Cause action was initiated by his commander which required the applicant to show cause for retention on active duty.

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

On 16 Jan 07, the applicant's defense counsel responded by offering a conditional waiver, waiving the applicant's rights to an administrative board hearing with the condition he be given no less than a general (under honorable conditions) discharge. In the applicant's statement he requested to remain on active duty or, if denied, be given an honorable discharge.

On 30 Jan 07, the applicant's conditional waiver was accepted with a recommendation to discharge him with a general service characterization.

On 16 Aug 07, the Administrative Law Division Chief of the Office of the Judge Advocate General found the discharge action legally sufficient and recommended the applicant's conditional waiver be accepted and he be discharged with a general service characterization.

On 24 Aug 07, the Secretary of the Air Force accepted the conditional board waiver and directed the applicant be discharge with a general (under honorable conditions) service characterization.

On 4 Feb 11, the Air Force Discharge Review Board (AFDRB) denied the applicant's request for a discharge upgrade concluding 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.

On 4 Oct 18, under case number BC-2012-00657-4, the AFBCMR considered and granted the applicant's request to upgrade his discharge to honorable with a narrative reason for separation of "Secretarial Authority" based on liberal consideration.

On 6 Dec 18, the applicant's DD Form 214 was reissued to reflect he was honorably discharged on 21 Sep 07 with a narrative reason for separation of "Secretarial Authority" and a separation code of "GKK" which denotes "Misconduct (Drug Abuse)." He was credited with 16 years, 1 month, and 22 days of total active service.

On 24 Jun 19, under case number BC-2020-00018, the applicant requested his discharge be changed to reflect he was separated under the Temporary Early Retirement Authority (TERA) so he would qualify for a retirement based on the previous Board's decision which upgraded his discharge to honorable. On 28 Jul 20, the AFBCMR considered and denied his request finding the preponderance of evidence did not substantiate his contentions.

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

AIR FORCE EVALUATION

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. While there is evidence the applicant has a service-connected mental health condition of Post-Traumatic Stress Disorder (PTSD), there is insufficient evidence he met the criteria for PTSD while in service

or that his mental health condition made him unfit for service during his time in service or at discharge.

In a Post-Deployment Health Assessment (PDHA) in 2005, while noting the applicant had seen dead bodies, also reported he was not concerned about any exposure issues. He was not interested in receiving any mental health services, nor did the provider refer him for any follow-up services. A Compensation and Pension (C&P) exam completed in 2007 diagnosed the applicant with adjustment disorder, not PTSD. This evaluation also noted the applicant preferred to stay in mortuary affairs, which is counter to the applicant's contention he sought to change his Air Force Specialty Code (AFSC). A C&P exam in 2014 diagnosed the applicant with PTSD. The applicant's effective date for his PTSD diagnosis/service connection is 25 Nov 13, approximately six years after his military service. Being diagnosed with a mental health condition and receiving mental health treatment does not automatically render a condition unfitting. More information is required to determine unfitness such as being placed on a permanent duty limiting condition (DLC) profile for his mental health condition, being deemed not worldwide qualified (WWQ) due to his mental health condition, and impact or interference of the condition on his ability to reasonably perform his military duties in accordance with his office, grade, rank, or rating. These designations were absent from his records.

There is no evidence the applicant was ever placed on a DLC or was deemed not WWQ from a psychological perspective. A medical request for separations/retirement clearance evaluation dated 21 Sep 07 noted potential physical medical conditions that might be considered for MEB; however, these were not mental health related. The applicant maintained exemplary performance throughout his career while enlisted and as an officer in mortuary affairs, despite his referred Officer Performance Report (OPR) for drug usage. The applicant himself in a memorandum for retention, detailed his accomplishments and outstanding performance. In a previous AFBCMR case, the psychiatric advisor's recommendation for an upgrade to honorable noted prior to his misconduct (drug use) the applicant received five stars on his OPR and was deemed a solid leader with superb leadership and was an exceptional officer with unquestionable work ethic/dedication. His rater determined he met standards on his OPR immediately following his misconduct of drug usage. There is insufficient evidence that demonstrates a mental health condition impacted his function in his ability to perform the duties of his office, grade, rank, or rating.

The military's Disability Evaluation System (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 the contrary, the Department of Veterans Affairs (DVA), operating under a different set of law, Title 38, U.S.C., is empowered to offer compensation for any medical condition with an established nexus with military service, without regard to its impact upon a member's fitness to serve, the narrative reason for release from service, or the length time transpired since the date of discharge. The DVA may also conduct periodic reevaluations for the purpose of adjusting the disability rating awards as the

level of impairment from a given medical condition may vary [improve or worsen] over the lifetime of the veteran.

Liberal consideration is not applied to the applicant's petition because this policy does not apply to medical discharge/retirement requests.

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 25 Sep 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 finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board finds there was evidence he had some mental health issues while in the service; however, the mere existence of a mental health 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 any other mental health diagnosis. A Service member shall be considered unfit when the evidence establishes the member, due to physical/mental health disability, is unable to reasonably perform the duties of his or her office, grade, rank, or rating. Furthermore, a higher rating by the DVA, based on new and/or current exams conducted after discharge from service, does not warrant a change to 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. Additionally, the Board did not find any of his mental health conditions to include PTSD 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 unfitting 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.

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-2023-01188 in Executive Session on 20 Dec 23:

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Panel Chair

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, Panel Member

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Panel Member

All members voted against correcting the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 14 Mar 23.

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

Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 5 Sep 23.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 25 Sep 23.

Exhibit E: Previous Case ROPs, dated 4 Oct 18 and 28 Jul 20.

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.

1/8/2024

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Board Operations Manager, AFBCMR

Signed by: USAF