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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01346

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COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His general (under honorable conditions) discharge be changed to a medical retirement.

APPLICANT'S CONTENTIONS

He was seen several times by the mental health staff while in service. He was rubber stamped and cleared to return to duty. His difficulties included insomnia and suicidal ideations. He tried to hide his symptoms in fear of stigma and appearing weak. In 2002, his behavior spiraled out of control and he was admitted for evaluation. In 2021, the Department of Veterans Affairs (DVA) awarded him a 70 percent disability rating. In 2022, after another mental health episode, the DVA awarded him a 100 percent disability rating for his post-traumatic stress disorder (PTSD).

In support of his request, he provides a DVA Benefits Summary letter dated 21 Apr 23 reflecting he was awarded a 100 percent service-connected disability rating effective 1 Dec 22.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

The applicant's military human resources record (MHRR) does not include any documentation pertaining to his discharge.

On 30 May 02, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with 4 years, 5 months, and 27 days of total active service.

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

POST-SERVICE INFORMATION

On 27 Oct 23, the Board sent the applicant a request for post-service information, including a standard criminal history report from the Federal Bureau of Investigation (FBI); however, he has not replied.

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Controlled by: SAF/MRB

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Limited Dissemination Control: N/A

POC: SAF.MRBC.Workflow@us.af.mil

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 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 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.

On 27 Oct 23, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

Department of the Air Force Instruction (DAFI) 36-3211, *Military Separations*, describes the authorized service characterizations.

Honorable. The quality of the airman's service generally has met Department of the Air Force standards of acceptable conduct and performance of duty or when a member's service is otherwise so meritorious that any other characterization would be inappropriate.

General (Under Honorable Conditions). If an airman's service has been honest and faithful, this characterization is warranted when significant negative aspects of the airman's conduct or performance of duty outweigh positive aspects of the member's military record.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request for a medical discharge/disability based on his mental health condition. Liberal consideration is not appropriate due to his request for a medical discharge/disability, which is not covered under this policy.

The applicant's service treatment records (STR) are not available. Thus, it could not be determined whether he had any unfitting mental health condition, including major depressive disorder (MDD) or PTSD, during service. The burden of proof is placed on the applicant to submit the necessary records to support his contention. His discharge paperwork is also not available. Since his military personnel records are limited and his STR is unavailable, there is no evidence or records to demonstrate his military service permanently aggravated his prior service condition of depression beyond the natural progression of the condition. He also did not report to his DVA providers how his military service aggravated his prior service depression and he refused to explain the reason for his general discharge. His DVA providers noted he had a history of PTSD from childhood trauma and his current anxiety and depression were exacerbated and aggravated by his post-service occupational problems and stressors. His hospitalization at the DVA in Aug 22 was for the worsening of his anxiety and passive suicidal ideation because of his work stress. In fact, most of his DVA mental health treatment records revolved around his work stress. There were no references or reports that his post-service anxiety, depression and/or suicidal thoughts were caused by or related to his military service or duties. There are no records reporting he was given a diagnosis of anxiety or depression during service.

The applicant marked PTSD on his AFBCMR application but did not provide any other information about his condition. His DVA treatment records consistently reported his PTSD was developed from his childhood trauma. There are no reports from his DVA providers that his PTSD was developed from his military service. As with his condition of depression, his condition of PTSD is also an exist prior to service (EPTS) condition and there is no evidence or records of military service or duties that permanently aggravated his EPTS condition of PTSD beyond its natural progression of the condition or illness. There are no records reporting he was given a diagnosis of PTSD during service.

Moreover, even if there were records to confirm he had a mental health condition or received mental health treatment during service, receiving a mental disorder diagnosis or mental health treatment does not automatically render a condition unfitting. There are no records to show he was placed on any duty limiting condition (DLC) profile for his mental health condition or that he was deemed not worldwide qualified (WWQ) because of his mental health. Further, there are no reports his mental health condition impaired his ability to reasonably perform his military duties in accordance with his office, grade, rank or rating. More information is needed to meet the criteria to be referred to the Medical Evaluation Board (MEB) and the Disability Evaluation System (DES) for a possible medical discharge/disability.

The applicant was service connected for his MDD, with Anxious Distress by the DVA compensation and pension (C&P) examiner. However, there are no records to confirm he had this condition during service. For awareness, the military's DES, established to maintain a fit and vital fighting force, can by law, under 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 DVA, under 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 service, the narrative reason for release from service, or the length of time transpired since discharge.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 7 Nov 23 comment (Exhibit E) but has received no response.

FINDINGS AND CONCLUSION

1. The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.
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 of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board notes there is no evidence in the applicant's military records or STR the applicant had any mental health condition, including depression/MDD or PTSD or that he received any mental health treatment during service and/or was hospitalized during service. Even if there were records to confirm he had a mental health condition or received mental health treatment during service, receiving a mental health disorder diagnosis or mental health treatment does not automatically render a condition unfitting. Further, there are no records the applicant was placed on any DLC profile for his mental health condition, there were no records to show he was deemed not WWQ because of his mental health condition and there are no reports from his commander or any military mental health providers to show his mental condition impaired his ability to reasonably perform his military duties in accordance with his office, grade, rank or rating. Furthermore, the nature or description of his misconduct was not identified in his available military records and the applicant refused to discuss the reason for his discharge with his DVA provider. As a result, the presumption of regularity is applied and there is no evidence of any error or injustice with his discharge. Moreover, the Board notes liberal consideration does not apply to the applicant's request for a medical retirement. 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-2023-01346 in Executive Session on 17 Apr 24:

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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 23 Jun 23.

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

Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 27 Oct 23.

Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 6 Nov 23.

Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 7 Nov 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.

4/25/2024

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Board Operations Manager, AFBCMR

Signed by: USAF

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