



CUI//SP-MIL/SP-PRVCY

**UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS**

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2023-01353

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His administrative discharge be upgraded to a medical discharge.

APPLICANT'S CONTENTIONS

He was injured and going through medical boards at the time of his separation. He is now a 100 percent disabled Veteran. He should have been medically discharged. The poor characterization of his separation was retaliation of his chain of command because he contacted a congress person regarding an abuse of power. This has been a personal embarrassment to him since it happened, and completely a whistle-blower type offense against him. Also, Block 28 of his DD Form 214, *Certificate of Release or Discharge from Active Duty*, is invalid.

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 11 August 1989, DD Form 4, *Enlistment/Reenlistment Document Armed Forces of the United States*, indicates the applicant enlisted in the Air Force Reserve for eight years under the Delayed Entry/Enlistment Program (DEP). He was discharged from the DEP and enlisted in the Regular Air Force 30 October 1989 for a period of four years.

On 1 October 1992, the applicant's commander recommended the applicant be discharged from the Air Force for Unsatisfactory Performance, under the provisions of AFR 39-10, *Separation Upon Expiration of Term of Service, for Convenience of Government, Minority, Dependency and Hardship*, paragraph 5-26c. The specific reason for the action was Failure to Progress in On-the-Job Training.

On 26 October 1992, the Staff Judge Advocate found the discharge action legally sufficient.

On 26 October 1992, the discharge authority directed the applicant be discharged for Unsatisfactory Performance, with an honorable service characterization. Probation and rehabilitation were considered, but not offered.

On 5 November 1992, the approved discharge was deferred pending the outcome of a required dual action process for the applicant.

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Controlled by: SAF/MRB
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Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

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On 29 April 1993, according to AF Form 618, *Medical Board Report*, the applicant was diagnosed with bilateral retropatellar pain syndrome with right iliotibial band syndrome and referred to the Informal Physical Evaluation Board (IPEB).

On 7 May 1993, according to AF Form 356, *Findings and Recommended Disposition of USAF IPEB*, the Board recommended the applicant be discharged with severance pay with 20 percent compensation.

On 20 May 1993, according to AF Form 1180, *Action on PEB Findings and Recommended Disposition*, the applicant disagreed with the findings of the IPEB and demanded a formal hearing.

On 30 June 1993, The Secretary of the Air Force directed the applicant be discharged by execution of the approved AFR 39-10 action.

On 14 July 1993, the applicant received an honorable discharge. His narrative reason for separation is "Unsatisfactory Performance" and he was credited with 3 years, 10 months, and 15 days of total active service.

On 9 September 1996, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 20 August 1997, 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.

On 1 April 2021, according to a Department of Veterans Affairs (DVA) Letter, dated 13 September 2022, provided by the applicant, he was awarded a combined 100 percent service-connected evaluation for his disabilities.

The applicant indicated he was a victim of Reprisal/Whistle Blower retribution on his application, however, he did not provide any evidence supporting this contention.

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

AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds insufficient evidence has been presented to support the applicant's request for a medical discharge based on his mental health condition. A review of the available records finds the applicant's contentions were not supported by his objective military records. There were no records the applicant had any potentially unfitting mental condition meeting the criteria for a referral to the Medical Evaluation Board (MEB) for a possible medical discharge causing early career termination. He was never placed on a duty limiting condition profile for his mental health condition, was never deemed not worldwide qualified or not deployable due to his mental health condition, and no reports from his commander or leadership that his mental health condition had interfered with his ability to reasonably perform his military duties in accordance with his office, grade, rank, or rating. There were no records to confirm he had any mental health condition or received mental health treatment, evaluation, or mental disorder diagnosis during service. The applicant began to receive mental health treatment through the DVA over 25 years after discharge for anxiety, depression, and sleep issues that were caused by his physical pain and other post-service stressors; his depression or depressive symptoms were specifically assessed to be secondary to his physical pain. His DVA treatment records reported his condition and symptoms were developed post service and no notes or records confirming they

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were developed or experienced during service. He was diagnosed with variations of depressive disorders such as unspecified depressive disorder and depressive disorder due to another medical condition by his DVA providers. There was no evidence he had any of these conditions or met diagnostic criteria for either condition during service. The applicant also marked post-traumatic stress disorder (PTSD) on his AFBCMR application and did not describe or discuss this condition any further. He did not identify his traumatic experiences that were incurred during or from service, when he developed this condition, and how this condition caused his discharge. There was no evidence he had PTSD or a similar condition during service. Furthermore, the applicant was never diagnosed with PTSD by a duly qualified mental health professional during or post-service and in fact, he was screened for PTSD during his second psychiatric evaluation by a DVA provider on 29 July 2020 and screened negative for PTSD. The applicant was referred to the MEB for his physical condition of bilateral retropatellar pain syndrome with right iliotibial band syndrome (knee pain) and the IPEB found this condition unfitting for continued military service. No mental health condition was referred to the MEB and no mental health condition including depression or PTSD was found to be unfit by the IPEB. It is acknowledged the applicant had received service connection from the DVA for mood disorder due to a known physiological condition decades after service and again, there were no records this condition had existed or occurred during his military service. For awareness, the military's Disability Evaluation System, established to maintain a fit and vital fighting force, 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 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 operating under a different set of laws, 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. There is no evidence of an error or injustice identified with the applicant's discharge to support his request for a medical discharge based on his mental health condition. Finally, liberal consideration is not appropriate to be applied to the applicant's request for a medical discharge. This type of request is not covered under this policy.

The complete advisory opinion is at Exhibit C.

ADDITIONAL AIR FORCE EVALUATION

The AFRBA Staff Physician Adjudicator recommends denial of the applicant's request. In 2003, the applicant appealed to the AFBCMR requesting to change his re-enlistment code to enlist in the Air National Guard contending his unsatisfactory performance was due to knee problems. The Board denied the applicant's request citing "...had the applicant been medically discharged, he would still not be able to re-enlist" as authored by the BCMR medical advisor. In this current application, the applicant did provide a DVA summary of benefits indicating the combined 100 percent disability rating; however, it's important to point out that the DVA disability evaluation system is not equivalent to the evaluation system within the Department of Defense. Each department is governed by different titles of the United States Code. The military can only offer compensation for service incurred diseases or injuries which specifically rendered a member unfit for continued active service and were the cause for career termination, whereas the DVA can offer compensation for any medical condition determined service incurred, without regard to a service member's retainability, fitness to serve, or the length of time since date of discharge. The medical advisor cannot identify any distinct reasons under applicable regulations to grant a favorable

outcome to the request. The additional evidence the applicant submitted was assessed to not support such action.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATIONS

The Board sent a copy of the advisory opinions to the applicant on 25 September 2023 for comment (Exhibit E) 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 AFRBA Staff Physician Adjudicator and finds a preponderance of the evidence does not substantiate the applicant's contentions. The available records are void of any evidence the applicant had any potentially unfitting mental health condition meeting the criteria for a referral to the MEB for a possible medical discharge causing early career termination. Further, the record shows the applicant twice failed his career development course (CDC) upgrade training in 1991 and was recommended for discharge. Through probation and rehabilitation (P&R) he successfully completed his courses but did not attain his five-skill level. After a prolonged period of trainee time, he failed two qualifying tests to attain his five-skill level. On 14 September 1992, he received a letter of reprimand (LOR). In November 1992, he was again recommended for discharge, his discharge was deferred pending results from a MEB. Ultimately the applicant was found unfit for chronic bilateral knee pain. Accordingly, the applicant's case was reviewed by Secretary of the Air Force Personnel Council (SAFPC) under dual action processing, and he was recommended for administrative discharge. There is no evidence the applicant's medical conditions prevented him from attaining his five-skill level. The Board finds no error or injustice in the processing of the applicant's separation.

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-2023-01353 in Executive Session on 20 December 2023:

-  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 20 December 2022.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 19 August 2023.
- Exhibit D: Advisory Opinion, AFRBA Staff Physician Adjudicator, dated 8 September 2023.
- Exhibit E: Notification of Advisories, SAF/MRBC to Applicant, dated 25 September 2023.

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.

 1/31/2024
Work-Product
Board Operations Manager, AFBCMR
Signed by: USAF