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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01695

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COUNSEL: NONE

HEARING REQUESTED: NO

### APPLICANT'S REQUEST

He be given a medical retirement.

### APPLICANT'S CONTENTIONS

All his health conditions which warranted a 100 percent disability impairment rating from the Department of Veterans Affairs (DVA) within three years of his discharge, were present while he was in the service. While he was in the service, he was undiagnosed for unknown reasons and was never approached or informed of a disability discharge possibility.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

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

On 21 Apr 16, the applicant received a referral Enlisted Performance Report (EPR) which indicated he received the Letter of Reprimand (LOR) for an off-base driving under the influence (DUI) incident.

On 2 May 16, the applicant submitted a response to the referral EPR stating he is in no way avoiding responsibility for his mistake; however, believed the referral was an incorrect measure of his performance over the past year. He further goes on to explain he took responsibility and fully acknowledged the seriousness of his mistake and did everything he could to earn back his leadership's trust as this was a one-time mistake.

On 11 Jul 17, the applicant acknowledged his requirement to ensure the separation health physical examination (SHPE) was completed prior to separation which was verified by a medical representative this same day; he completed the requirements for the SHPE and was medically cleared for separation.

On 24 Aug 17, DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects the applicant was honorably discharged in the grade of senior airman (E-4) after serving eight years

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of active duty and was transferred to the Air Force Reserve (AFR). He was discharged, with a narrative reason for separation of "Reduction in Force."

On 24 Oct 17, he was notified of his assignment to the non-obligated, non-participating, Ready Personnel Section indicating he fulfilled his eight-year service commitment.

On 22 Sep 20, Reserve Order Work-Product indicates the applicant was honorably discharge from the AFR, effective 24 Aug 20.

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**

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. There is insufficient evidence the applicant was not fit for duty during his military service and at the time of his discharge. During his military service, the applicant had mental health diagnoses/conditions of occupational problems (which resolved with treatment), adult physical abuse, partner relational problems, other specified problems related to psychosocial circumstances, and unspecified anxiety disorder. 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 a mental health condition, being deemed not worldwide qualified (WWQ) due to a mental health condition, and impact or interference of the condition on the service member's ability to reasonably perform their military duties in accordance with their office, grade, rank, or rating. These designations were absent from the records. The applicant's in-service mental health record clearly documents he was never placed on a profile or DLC. He remained WWQ and deployable. His mental health encounters document he was released without limitations, there were no alterations to his duty status, and he was fit for continued military service. The applicant contends he was never considered for a disability discharge (it was never discussed); however, mental health documentation regularly shows the provider routinely considered and determined the applicant was not referred for medical disability/administrative separation processing and did not require a Medical Evaluation Board (MEB).

The applicant contends his service connection for anxiety disorder indicates he should have been considered for medical retirement/disability. 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 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.

After reviewing the entire record, there is insufficient evidence the applicant was unable to perform the duties of his office, grade, rank, and rating. All his performance evaluations demonstrate average to exemplary abilities. The exemption to this is when he received a LOR for a DUI incident. Even during this rating period, it was noted his performance remained average, with his following performance review in the above-average range (4/5). Finally, his Compensation and Pension (C&P) examination dated 18 Mar 21, notes the examiner made several conclusions about the applicant's fitness for duty indicating he had no mental health issues that warranted a MEB and if he had not had the DUI would probably still be in the service. The C&P examiner's conclusions, the applicant's mental health records, and his performance evaluations all indicate he was able to perform the duties of his office, grade, rank, and rating, and was fit for military service during his military service and at the time of his discharge.

The complete advisory opinion is at Exhibit C.

The AFBCMR Medical Advisor recommends denying the applicant's request for a military medical retirement. The reviewed evidence did not reveal any degree of unfitness whereby the applicant was permanently unable to fulfil his military duties. Post-service DVA ratings are not synonymous or equivalent to the military's disability evaluation near the time-of-service discharge. The burden of proof is placed on the applicant to submit evidence to support his request. The evidence he did submit were assessed to not support his request for a finding of or granting a medical retirement. The overall separation process was in accordance with regulatory guidance and was fair and appropriate without evidence of an applied error or rendered injustice.

From the medical records in the electronic data base, there were only three periods where the applicant was on a medical restrictive profile and all were temporary restrictions. In mid-Feb 12, he had a 4-week duty and fitness restrictive profile. In mid-2014, secondary to a recovery period after undergoing maxillofacial surgery, he was profiled with duty, mobility, and fitness restrictions which expired on 3 Jul 14. The third period of a profile was a 3-week no running restriction due to right ankle pain in Oct 16. There was no evidence he was placed on a permanent duty limiting condition profile, never deemed not WWQ due to a physical condition, and there were no statements from his leadership a physical health condition had impacted his ability to reasonably perform his military duties in accordance with his office, grade, rank, or rating. Therefore, none of the physical conditions and corresponding diagnoses contained in the medical records or documented by the DVA were deemed disqualifying for service retention or determined as being unfitting for continued duty. No potentially unfitting medical condition was identified that would be referred to the DES. As noted in the previous advisory, different laws govern the DVA's disability system versus the military disability system; they are not the same.

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 4 Jan 24 for comment (Exhibit E), and the applicant replied on 24 Jan 24. In his response, the applicant contends he disagrees with the advisory opinions. All his conditions existed at the time of his separation; however, due to the negligence of the medical facility, all of this was undiscovered. It was a common belief, especially in his unit, if you were not global mobility ready, you were not a value to the wing. His job, while in the service, was to complete the mission at all costs, regardless of the sacrifice it meant to his body. His medical issues were masked by his obsessive use of alcohol which has been remedied by getting the professional help he needed. The opinion concerning his DUI is false. This was one occurrence in his military career and drastically impacted his mental health. His mental health reviewer reiterated his mental health status is highly reflective of the thought process during that period. He attached a third-party mental health evaluation he completed in his pursuit for a 100 percent disability rating with the DVA. He has had no traumatic event to warrant a Diagnostic and Statistical Manual of Mental Illness (DSM-5) rating since leaving the military. Unless an extremely traumatic event occurred from the time he separated until the evaluation, there is a discrepancy in his mental health records from the military. The constant operations tempo and low manning was a disaster on his body and mental health.

The applicant's complete response is at Exhibit F.

## **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 the victim of an error or injustice. Based on the available evidence of record, it appears the discharge was consistent with the substantive requirements of the governing regulations; therefore, the Board finds no error or injustice occurred with his separation finding he was properly separated due to Force Reduction. Additionally, the Board concurs with the rationale and recommendation of the AFRBA Psychological Advisor and the AFBCMR Medical Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. Specifically, the Board finds the applicant did have mental health diagnoses; however, he was never placed on a permanent duty limiting condition profile and remained WWQ and deployable. Furthermore, the applicant had no physical medical disabilities to the degree of unfitness indicating he was permanently unable to fulfil his military duties. All medical restrictive profiles were temporary restrictions and not of a permanent nature. The mere existence of a medical diagnosis does not automatically determine unfitness and eligibility for a medical separation or retirement. A Service member shall be considered unfit when the evidence establishes the member, due to physical or 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 in 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

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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. Therefore, the Board recommends against correcting the applicant's records.

## 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 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-2023-01695 in Executive Session on 21 Feb 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 18 May 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 13 Oct 23.
- Exhibit D: Advisory Opinion, AFBCMR Medical Advisor, dated 2 Jan 24.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 4 Jan 24.
- Exhibit F: Applicant's Response, w/atchs, dated 24 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.

3/11/2024

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Board Operations Manager, AFBCMR  
Signed by: USAF

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