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UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF: [redacted]

DOCKET NUMBER: BC-2023-02241

COUNSEL: [redacted]

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. He be given a medical retirement.

2. His injuries be assessed as combat-related in order to qualify for compensation under the Combat-Related Special Compensation (CRSC) Act.

APPLICANT'S CONTENTIONS

In Iraq, he sustained debilitating injuries which forever, altered his life. He witnessed unspeakable horrors while deployed to Iraq. His combat-related Post-Traumatic Stress Disorder (PTSD) consumes his entire life tormenting him with relentless nightmares and crippling anxiety. His honorable discharge fails to recognize the sacrifice, pain, and struggles he endured. His injuries were exacerbated by his service. His TBI and PTSD resulted from direct enemy fire in Iraq, mortar explosions on two separate occasions. The Department of Veterans Affairs diagnosed him with PTSD with alcohol use disorder and a Traumatic Brain Injury (TBI) with a 100 percent disability rating. He has several other medical conditions which were service-connected and rated by the DVA. These physical ailments were caused by the constant physical work behind the deployments and active-duty service and his mental ailments were caused by the effects of deploying to Iraq. Furthermore, there is no indication misconduct played a role in the injuries he suffered. He was unable to fulfill his duties as an airman because of the consistent visits to medical for a variety of medical issues. Because of his mental health issues, he was unable to sleep, had lost pleasure in daily activities, and was unable to do his daily duties as a security officer. Because of his declining health, he was denied reenlistment and was discharged instead of being properly processed through a Medical Evaluation Board (MEB).

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force Reserve (AFR) staff sergeant (E-5).

Dated 5 May 11, AF IMT 1288, Application for Ready Reserve Assignment, indicates the applicant desired to be transferred to the Reserve. It is noted, the applicant met the physical qualifications for continued service and assignment to the AFR.

On 4 Jul 11, DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects the applicant was honorably discharged in the grade of staff sergeant (E-5) after serving six years of active duty. He was discharged, with a narrative reason for separation of "Completion of Required Active Service." The reentry (RE) code annotated on his DD Form 214 is "1J" which denotes eligible to reenlist but elects separation.

Dated 9 Jul 13, Reserve Order [redacted] indicates the applicant was honorably discharged from the AFR, effective 4 Jul 13.

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

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 (USD P&R) 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, 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 4 Apr 24, the Under Secretary of Defense for Personnel and Readiness issued a memorandum, known as the Vazirani Memo, to military corrections boards considering cases involving both liberal consideration discharge relief requests and fitness determinations. This memorandum provides clarifying guidance regarding the application of liberal consideration in petitions requesting the correction of a military or naval record to establish eligibility for medical retirement or separation benefits pursuant to 10 U.S.C. Section 1552. It is DoD policy the application of liberal consideration does not apply to fitness determinations; this is an entirely separate Military Department in determining whether, prior to "severance from military service," the applicant was medically fit for military service (i.e., fitness determination). While the military corrections boards are expected to apply liberal consideration to discharge relief requests seeking a change to the narrative reason for discharge where the applicant alleges combat- or military sexual trauma (MST)-related PTSD or TBI potentially contributed to the circumstances resulting in severance from military service, they should not apply liberal consideration to retroactively assess the applicant's medical fitness for continued service prior to discharge in order to determine how the narrative reason should be revised.

Accordingly, in the case of an applicant described in 10 U.S.C. Section 1552(h)(l) who seeks a correction to their records to reflect eligibility for a medical retirement or separation, the military corrections boards will bifurcate its review.

First, the military corrections boards will apply liberal consideration to the eligible Applicant's assertion that combat- or MST-related PTSD or TBI potentially contributed to the circumstances resulting in their discharge or dismissal to determine whether any discharge relief, such as an upgrade or change to the narrative reason for discharge, is appropriate.

After making that determination, the military corrections boards will then separately assess the individual's claim of medical unfitness for continued service due to that PTSD or TBI

condition as a discreet issue, without applying liberal consideration to the unfitness claim or carryover of any of the findings made when applying liberal consideration.

On 1 Jul 24, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit H).

In accordance with 10 U.S.C. Section 1413a and DoD Financial Management Regulation, Vol 7B, Chapter 6, the fact that a member incurred the disability during a period of war; while serving in an area of armed conflict; and/or while participating in combat operations is not sufficient by itself to support a combat-related determination. When making combat-related determinations, with regard to Armed Conflict, Hazardous Service, Simulation of War or an Instrument of War, the board looks for definite, documented, causal relationship between the armed conflict and the resulting disability. The DVA awards service-connected disabilities based on their standards. They resolve doubt in the interest of the veteran and grant service connection for injuries or diseases incurred while in service. While service connection for disabilities is required for initial eligibility for CRSC consideration, the CRSC program is designed to provide compensation for combat-related injuries and its standards are much more rigorous when determining if claimed disabilities qualify as combat-related. There needs to be evidence that confirms both the injuries and how they occurred (combat-related event) to confirm the disabilities were a direct result of Armed Conflict, Hazardous Service, Simulation of War or an Instrument of War.

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 a medical retirement. While the applicant is currently diagnosed with PTSD and TBI post-service, there is insufficient evidence he met the criteria for a mental health condition during his time in service. The applicant was regularly evaluated for mental health symptoms during his service, and post-service and was not service-connected with PTSD until his Compensation and Pension (C&P) evaluation on 9 Sep 16, approximately three years after his Reserve military service and five years after his active-duty service. His previous post-service C&P did not diagnose him with any mental health condition including TBI. The examiner noted he did not detect any significant mental health problems. The examiner also noted the applicant's responses to an assessment designed to detect malingering were suggestive of a significant level of symptom over-endorsement. All of the applicant's evaluations during his service, while noting some health-related concerns, noted no recent emotional stress, cleared for deployment, depression screen negative, and no sleep disturbance. Despite several evaluations that focused on mental health, he was not diagnosed with any mental health condition.

Despite counsel's contention, there is insufficient evidence the applicant was unfit for service during his time in service or at discharge. As discussed above, there is insufficient evidence he had a mental health condition or TBI during his service. Even if the applicant had been diagnosed with a mental health condition to include TBI, there is no evidence this would have been unfitting. Being diagnosed with a mental health condition does not automatically render a condition as

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 applicant's records. He was never determined to have any DLCs or placed on a profile, he remained WWQ, and he was able to perform his military duties. His service record demonstrates these abilities. His performance evaluations show his exemplary performance where he continually earned 5/5 ratings. He was promoted regularly while in the military, attaining the grade of staff sergeant. He earned military awards throughout his career with the most recent being when he left active duty. There is insufficient evidence he was unfit for duty during his time in the Reserve. While counsel contends his medical appointments prevented him from completing his duties as an airman, there is insufficient evidence of this in his service record. There is no evidence the applicant was not able to perform the duties of his office, grade, rank, and rating.

The applicant was never diagnosed with a TBI, in-service or post-service. While he was evaluated for a TBI, the examiner (C&P, 28 Apr 22) could not differentiate between PTSD symptoms and TBI as the examiner determined there was significant overlap in the symptoms. These conditions were combined on his DVA rating (PTSD, with alcohol use disorder with TBI). He was denied a claim for TBI on 10 May 22. Despite the DVA rating of 100 percent for PTSD, this does not indicate he was unfit for duty at the time of his service. It should be noted 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. In the applicant's case, his symptoms appear to have worsened after his discharge from the military.

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 23 Apr 24 for comment (Exhibit D), and the applicant replied on 23 May 24. In his response, through counsel, the applicant contends the advisory opinion relies on the fact, he was never diagnosed with a TBI and could not differentiate between PTSD symptoms and the TBI because of the overlap of symptoms. Even though he was rated by the DVA, the advisor concluding this does not indicate he was unfit for duty at the time of separation. In the Kurta memorandum, he is entitled to a lenient review because

his TBI occurred during his military service. He visited medical over 12 times within a month which showed his body was beginning to break down and therefore, was unable to perform his duties. Even though he was not formerly diagnosed with a TBI during service, his symptoms were present, which manifested in his inability to perform his assigned duties. His case should be processed through the Physical Evaluation Board (PEB) to determine if he should have been medically retired.

The applicant's complete response is at Exhibit E.

ADDITIONAL AIR FORCE EVALUATION

The AFBCMR Medical Advisor recommends denying the application finding insufficient evidence to support the applicant's request for a medical retirement. There was no definitive evidence of a material error, injustice, impropriety, or inequity found in the process leading up to the applicant's separation. The military's DES is not a direct option for any individual, but rather is bought forth when there exist a potentially unfitting medical or mental health condition and one's fitness and ability to continue serving remains at bay.

Counsel correctly noted in their brief to be eligible for a military medical retirement, the applicant must demonstrate the injuries were caused or exacerbated by military service, the injuries were not the result of his misconduct, and the injuries rendered the applicant unfit for continued service at the time or his discharge. However, later in the same brief, counsel appeared inconsistent and frankly incorrect about being medically unfit by stating, since the applicant was spending so much time at medical, he was not able to fulfill his duties. and therefore, was unfit for service because he was consistently not able to do his job. The rendering of a military unfit determination is linked to a specific medical or mental health condition and not based on how often one is seen by a medical provider. Excluding his mental health, all the physical conditions noted in counsel's brief and rated by the DVA were not all represented while the applicant was on active duty. His separation physical examination conducted on 12 May 11 revealed he was in no pain, although the note documented his reported chronic medical conditions to include his skin condition and lower back pain and muscle fatigue in the lower legs. The low back pain condition was noted as long-term and chronic and as per a 9 Apr 11 encounter, the applicant noted he manages his dull lower back pain on his own.

The evidence submitted as well as the records reviewed from the DoD record database did not reveal any of the physical conditions listed in the counsel's brief that received a DVA disability rating ever rose to be identified as a potentially unfitting condition while he was serving on active duty, which would have initiated the beginnings of the DES process. There was no evidence whatsoever the applicant was ever placed on a long-term duty limiting condition profile for a physical condition, nor has there been any documentation provided to show he had a potentially unfitting medical condition that would or should have been referred to a MEB.

The complete advisory opinion is at Exhibit F.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 26 Jun 24 for comment (Exhibit G), and the applicant replied on 26 Jul 24. In his response, the applicant contends, through counsel, he managed his lower back pain while he was on active duty to the best of his ability and did his best to hide the constant pain he was suffering. Furthermore, his medical records show the presence of symptoms consistent with PTSD and he did not receive the proper treatment to adequately address his conditions. He reported his physical and mental health severely hindered his ability to fulfill his military duties, manage responsibilities at home, and maintain relationships. The documentation of his severe health challenges coupled with the lack of appropriate medical intervention, supports liberal consideration for a favorable outcome in his case which is consistent with the Doyon court's interpretation. He realizes he should have been more forthcoming with his leadership regarding his health issues which would have likely led to DES processing. The application of liberal consideration as outlined in the applicable policies and regulations, particularly concerning mental health conditions such as PTSD, necessitates a compassionate and thorough review, giving weight to the potential impact of PTSD on his behavior and actions leading to his separation.

The applicant's complete response is at Exhibit I.

On 18 May 25, the applicant submitted additional evidence, his DVA disability rating decision dated 22 Apr 24 showing an award of a 40 percent rating for his fibromyalgia (claimed as chronic pain, restlessness and fatigue), effective 2 Apr 15.

The applicant's complete submission is at Exhibit J.

FINDINGS AND CONCLUSION

1. The application was not timely filed. The Board 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)*.

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 recommendations 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 does not find any of the applicant's medical or mental health conditions at the time of his discharge unfitting. The applicant was not diagnosed with any unfitting medical or mental health conditions which rendered him unable to perform the duties of his office, rank, grade, or rating nor did the Board find his reason of multiple visits to the medical clinic a viable reason for DES processing. A fitness determination is linked to a specific medical or mental health condition and not based on

how often one is seen by a medical provider and the mere existence of a medical or mental health diagnosis does not automatically determine unfitness and eligibility for a medical separation or retirement. The applicant's military duties were not severely degraded due to his mental or medical conditions. Additionally, a combat-related determination is not warranted because the applicant did not have any unfitting medical or mental health conditions at or near the time of separation to warrant such a rating. The Board took note of the applicant's disability ratings from the DVA but did not find this evidence compelling to warrant relief. 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 to which the DVA can offer compensation. Furthermore, based on the 4 Apr 24 memorandum from the Under Secretary of Defense for Personnel and Readiness, known as the Vazirani Memo, stating boards should not apply liberal consideration to retroactively assess the applicant's medical fitness for continued service prior to discharge in order to determine how the narrative reason should be revised; the Boards finds the applicant's request for a medical retirement to be considered under liberal consideration is not warranted. Lastly, the Board finds no evidence the applicant was denied reenlistment due to his mental health or medical condition. His DD Form 214 from his active-duty time indicates he was eligible for reenlistment but elected to be separated and in his application to the Reserve, he was determined to be medically qualified for enlistment. 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 DAFI 36-2603, paragraph 2.1, considered Docket Number BC-2023-02241 in Executive Session on 22 Aug 24 and 30 May 25:

[redacted], Panel Chair
[redacted], Panel Member
[redacted], Panel Member
[redacted], Panel Chair
[redacted], Panel Member
[redacted], Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 7 Jul 23.

Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 15 Apr 24.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 23 Apr 24.
Exhibit E: Applicant's Response, w/atchs, dated 23 May 24.
Exhibit F: Advisory Opinion, AFBCMR Medical Advisor, dated 24 Jun 24.
Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 26 Jun 24.
Exhibit H: Letter, SAF MRBC (Liberal Consideration), dated 1 Jul 24.
Exhibit I: Applicant's Response, dated 26 Jul 24.
Exhibit J: Additional Evidence from Applicant, dated 18 May 25.

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 [redacted]
[redacted]
Board Operations Manager, AFBCMR