

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03234

XXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His official military personnel record be amended to reflect a medical retirement with his Separation Authority of Air Force Regulation (AFR) 39-10, *Administrative Separation of Airmen*, Separation Code of JFX [Personality Disorder], and Reentry Code of 2C [Involuntarily separated with an honorable discharge], amended accordingly.

APPLICANT'S CONTENTIONS

At the time of discharge, he was coerced into waiving his rights to legal counsel and was not properly evaluated for mental illness. On or about 14 Nov 12, he was diagnosed and granted a 70 percent disability for service-connected Post-Traumatic Stress Disorder (PTSD) by the Department of Veterans Affairs (DVA). Shortly before that, he was referred by a DVA social worker to be tested based on her initial interview with him for possible DVA surgery. After further testing and evaluation, it was confirmed he suffers from PTSD and suffered from PTSD at the time of his discharge. He attempted to submit this correction and did not have the mental capacity to research the process and procedures to file for the correction. He would have a mental breakdown during the process research and did not know where to turn for help. He had a hard time coping with the diagnosis and it took a long time to get with the DVA doctor to get the proper medication to cope with his mental health issues. At the time of discharge, not much was known about PTSD.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an honorably discharged Air Force senior airman (E-4).

On 22 Jun 90, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFR 39-10, paragraph 5-11i(1). The specific reason for the action was: The applicant was diagnosed on 8 May 90 as having a chronic character-behavior disorder with a general negative self-image, Axis II 301.90, that interferes with his duty performance.

On 22 Jun 90, the Staff Judge Advocate found the discharge action legally sufficient.

On 28 Jun 90, the discharge authority directed the applicant be discharged under the provisions of AFR 39-10, Chapter 5, paragraph 5-11i, for character and behavior disorder, with an honorable service characterization. Probation and rehabilitation were considered, but not offered.

On 6 Jul 90, the applicant received an honorable discharge. His Separation Authority is "AFR-39-10", Narrative Reason for Separation is "Conditions that Interfere with Military Service – Not

Disability – Character and Behavior Disorder”, Separation Code is “JFX”, Reentry Code is “2C”, and he was credited with three years, three months, and six days of total active service.

On 29 Oct 14, according to a DVA decision letter, provided by the applicant, his service-connected condition of PTSD and Major Depressive Disorder (previously rated as Major Depressive Disorder) worsened, and he was granted an increased percentage from 30 percent to 70 percent, effective 14 Nov 12.

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

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, 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 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 Title 10, United States Code § 1552 (10 USC § 1552). It is DoD policy the application of liberal consideration does not apply to fitness determinations; this is an entirely separate Military Department determination regarding 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 USC § 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 3 Jun 24, Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request for a medical retirement based on his mental health condition.

A review of the applicant's available military and medical treatment records finds no evidence to support the applicant's contentions and request. The applicant received a mental health evaluation during service by referral of his commander after his spirits were observed to be extremely low and he reported feeling unsafe following his return from leave. The mental health evaluation occurred on 30 Apr 90, and it was determined there was no evidence of mental defect, emotional illness, or psychiatric disorder, as defined by AFR 160-43, *Medical Examination and Medical Standards*, of sufficient severity to warrant disposition through military control channels. In other words, he did not have any unfitting mental health conditions that would warrant a referral to the Medical Evaluation Board for a medical discharge or retirement. The applicant was assessed and was given a diagnosis of Personality Disorder NOS [Not Otherwise Specified] from having a general negative self-image manifested as rigid, stubborn, and over-sensitive thoughts and behaviors. He also had low frustration tolerance and felt highly anxious and most likely would have future difficulties in social or work situations. The applicant's personality disorder was an unsuited condition for continued military service, and he was administratively discharged for this reason. The applicant received a security clearance evaluation at Brooke Army Medical Center (BAMC) on 17 Nov 08, about 18 years after his military discharge, and this evaluation also resulted in him receiving a diagnosis of Personality Disorder NOS, the same disorder he was diagnosed with during service. His personality disorder was determined to be chronic, and he was not recommended to receive a security clearance indicating an impairment to his occupational functioning.

Personality disorders are enduring patterns of inner experiences and behaviors that are pervasive and inflexible, are stable over time, and lead to distress or impairment. The fact that another mental health provider was able to detect his personality traits and diagnosed him with the same personality disorder years after his military service would support that he had a bona fide personality disorder during service. The applicant was never diagnosed with a personality disorder by his providers at the DVA, but they also did not assess him for this condition, nor did

they address or dispute his past personality disorder diagnosis. Thus, the applicant's personality disorder diagnosis given during service was valid and there is no error or injustice with this diagnosis.

The applicant is requesting a medical retirement for PTSD. There is no evidence he had this condition or a similar condition during service. He claimed not much was known about PTSD at that time, but for historical reference, PTSD became an official diagnosis in 1980 when the Diagnostic and Statistical Manual of Mental Disorder, Third Edition was published. PTSD had been in existence for 10 years before the applicant was discharged from service; therefore, his claim that PTSD was not known at the time is unfounded. From the applicant's post-service and DVA treatment records, he was screened for PTSD over the years. When he first presented for his security clearance evaluation at BAMC on 10 Nov 08, he was screened for PTSD and the results found he did not have possible PTSD. He received a mental health evaluation on 1 Jun 11 after he returned to mental health treatment following a 14-year hiatus and denied having any trauma and a diagnosis of PTSD was disconfirmed. About a couple of years later, on 7 Jan 13, the applicant received a psychiatric evaluation from a psychiatrist and denied having any PTSD symptoms. He said he took classes regarding PTSD and felt he had some PTSD symptoms because he was afraid all of the time. His feeling of being afraid all of the time did not confirm he had PTSD, and this problem or symptom is not exclusive to PTSD. The applicant did not receive a diagnosis of PTSD at that time. He received a formal evaluation for PTSD on 2 Aug 13 after he reported during a pre-bariatric surgery psychological evaluation that he experienced traumatic experiences from his Explosive Ordnance Disposal (EOD) duties while in the Air Force. The applicant claimed he was blowing stuff up all of the time, clearing bombs, setting up explosives, and had a near rollover as the vehicle came off on most of its wheels. He had fears he would be blown up. The applicant was an EOD Specialist so these experiences may have occurred during his military service. From these traumatic experiences, he claimed he had PTSD symptoms of intense fear, helplessness, and horror, bi-monthly nightmares, avoided activities that reminded him of these traumatic experiences, difficulties with memory and recall of events, difficulties with concentrating, lacking interest, feeling numb, being isolated from others, and being constantly nervous or on guard. The applicant was given a formal diagnosis of PTSD from this evaluation, which occurred 23 years after his discharge from the military. It appeared he had a delayed expression of PTSD as his records indicated he went through several years and decades of not having PTSD or PTSD symptoms. His post-service experiences and stressors most likely triggered his symptoms and caused them to progress over the years resulting in him meeting the diagnostic criteria for PTSD decades after his military service and traumatic events per his records. There is no evidence or records he had or experienced any of the PTSD symptoms that he endorsed to his provider at the DVA during service. There is evidence in his military records his spirits were reported as extremely low, he felt unsafe, had low frustration tolerance, and was feeling highly anxious. The causes or origin of these symptoms were not revealed, but his commander reported he had just come off leave that day, and it is possible this was related to his leave and not necessarily indicative he had PTSD. It is possible these were symptoms of PTSD; however, many mental disorders share these same symptoms. Regardless of whether the applicant had PTSD or a similar condition during service, experiencing these symptoms does not automatically render his mental health condition unfitting. There is no evidence or records he was placed on a duty-limiting condition profile, and he was never deemed not worldwide qualified due to his mental health condition. The applicant's commander did restrict his access to handling explosives and firearms due to his safety concerns, but the restrictions appeared to be temporary with no records to confirm they were permanent. The applicant also received a Letter of Reprimand on 29 Mar 90. He was deemed unfit for duty on the morning of 26 Mar 90 because he reported being tired and receiving only 2-3 hours of sleep earlier that morning. He was unable to operate a vehicle, carry a firearm, and perform duties as an EOD Specialist because of his fatigue which could potentially cause safety concerns. The applicant was temporarily unfit for duty due to his lack of sleep and not because of his mental health condition. There is no evidence his lack of sleep was caused by his mental health

condition or by having a mental health condition. There are no records he was permanently unfit for duty because of his lack of sleep. This type of unfitness for duty is different than being unfit for military service due to having an unfitting mental health condition. The applicant had an unsuited mental health condition of a personality disorder and not an unfitting mental health condition. Unsuitable conditions meet the criteria for an administrative discharge, which he appropriately received.

The applicant also marked "TBI" on his application to the Board. He did not discuss how and when he sustained a TBI during service. The applicant reported during his security clearance evaluation on 17 Nov 08 that in 1992, two years after his discharge, he woke up in the Intensive Care Unit and lost about five days of memories. He fell while roller skating and had memory problems since the incident. The applicant repeated a similar incident during his PTSD evaluation on 2 Aug 13 where he vaguely stated he had difficulties with recall since he fell and hit his head. He did not indicate whether this incident had occurred during service. However, the applicant's DVA treatment notes, dated 25 Apr 13, reported again he had a closed head injury in 1992 when he fell and hit his head while skating. He experienced being dazed, lost consciousness for three to four days and sustained permanent impairment to his eyesight and memory of names following this incident. It is not certain he was referring to this post-service incident causing his memory issues during his evaluation for PTSD. There is no evidence or records he sustained a TBI and no evidence or records he had any memory and concentration problems, anger and irritability, problems with problem-solving, or other neuropsychological issues developed from a TBI during service. There are no records the applicant was ever diagnosed with a TBI or a related condition by any of his providers at the DVA. Since there is no evidence he had a TBI during service, there is no evidence this condition was unfitting for continued military service resulting in a medical discharge.

For awareness, since the applicant had received service-connection from the DVA for his mental health condition: The military's Disability Evaluation System (DES), established to maintain a fit and vital fighting force, can by law, under Title 10, United States Code (10 USC), 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, 38 USC, 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 of 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 request for a medical retirement because the updated clarifying guidance, the Vazirani Memorandum, published on 4 Apr 24, clearly states liberal consideration does not apply to fitness determination requests, which includes medical discharge/retirement. The updated clarifying guidance also instructed a bifurcated review should be performed when a mental health condition such as PTSD or TBI potentially contributed to the circumstances of discharge or dismissal to determine whether an upgrade to the discharge or change to the narrative reason is appropriate. The applicant already received an honorable character of service and there is no error or injustice identified with his narrative reason for separation; therefore, a bifurcated review is not necessary or required.

Finally, since his DD Form 214, *Certificate of Release or Discharge from Active Duty*, indicated "Character & Behavior Disorder" as part of his narrative reason for discharge, it is recommended the Board remove this description or change his narrative reason to "Condition Not a Disability" for privacy reasons.

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 20 Aug 24 for comment (Exhibit E) but has received no response.

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 the victim of an 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 regarding his PTSD diagnosis. However, his narrative reason for separation should be amended to protect his privacy, as recommended by the AFBRA Psychological Advisor. For the remainder of the applicant's request, the evidence presented did not demonstrate an error or injustice, and the Board therefore finds no basis to recommend granting that portion of the applicant's request.

There is no evidence the applicant was diagnosed with PTSD during his military service. He did receive a mental health evaluation, on 30 Apr 90, and was diagnosed with a chronic character-behavior disorder; Personality Disorder NOS, an unsuiting condition which resulted in his administrative discharge. This same mental health evaluation specifically stated there was no evidence of mental defect, emotional illness, or psychiatric disorder, as defined by AFR 160-43, of sufficient severity to warrant disposition through military medical channels. Contrary to the applicant's contentions regarding PTSD awareness, PTSD became an official diagnosis in 1980 when the Diagnostic and Statistical Manual of Mental Disorder, Third Edition was published. Further, there is no evidence the applicant experienced a TBI, or other neuropsychological issues developed from a TBI, during military service. The applicant's post-service treatment records note he reported a closed head injury resulting from a fall while skating in 1992, two years after his discharge.

While the DVA, operating under 38 USC, is empowered to offer compensation for any medical condition with an established nexus with military service, the military's DES, operating under 10 USC, can 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.

Additionally, the applicant waived his right to legal counsel under the condition he receive an honorable service characterization. He further requested his records note the findings of his mental health evaluation regarding lack of a diagnosis of sufficient severity to warrant disposition through military medical channels. Liberal consideration was not applied to the applicant's request for medical retirement in accordance with the Vazirani Memorandum. The applicant received an honorable character of service, consequently, a bifurcated review is not necessary or required.

Finally, it appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. Therefore, the Board recommends correcting the applicant's records as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show on 6 Jul 90, he was discharged with a narrative reason for separation of “Condition, Not a Disability” and a separation code of “JFV.”

However, regarding the remainder of the applicant’s request, the Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the application will only be reconsidered upon receipt of relevant evidence not already considered by the Board.

CERTIFICATION

The following quorum of the Board, as defined in Department of the Air Force (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2023-03234 in Executive Session on 20 Nov 24:

, Panel Chair
, Panel Member
, Panel Member

All members voted to correct the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 29 Sep 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 3 Jun 24.
Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 17 Jul 24.
Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 20 Aug 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.

X

Board Operations Manager, AFBCMR