

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2023-03423

XXXXXXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** YES

### APPLICANT'S REQUEST

His DD Form 214, *Certificate of Release or Discharge from Active Duty*, be amended to reflect a medical retirement, with a 70 percent disability rating, and he receive all pay and benefits.

### APPLICANT'S CONTENTIONS

He recently initiated a request for his service file and obtained a number of documents and information to which he was previously unaware. These documents brought to light evidence that he was improperly discharged, and he could use the DD Form 149, *Application for Correction of Military Records Under the Provisions of Title 10, U.S. Code, Section 1552*, to rectify his discharge status. He was made aware of the letter, dated 9 Nov 07, in the beginning of Jan 22, where it states he had been improperly discharged, as well as the email exchange discussing the error in discharge status. These emails were internal emails and not known to him previously. There are multiple errors made regarding his discharge status.

He was discharged administratively on 2 Nov 07 with a general (under honorable conditions) discharge after serving a sentence from a court-martial. He had a Medical Evaluation Board (MEB) on 30 May 07 and a separation date of 7 Aug 07 assigned on 25 Jun 07. The evidence provided shows he was injured in the line of duty, his Bipolar Disorder did not exist prior to service, the Physical Evaluation Board (PEB) is in direct conflict with the MEB, he was improperly discharged, and the circumstances of the court-martial were directly related to the injuries sustained during service.

The letter dated 9 Nov 07 stated he was being advised of an error in his release from active duty with the Air Force on 2 Nov 07. It goes on to say he can apply to the Air Force Board for Correction of Military Records (AFBCMR) which he is doing now that he became aware of this letter's existence. There is a detailed email exchange dating from 16 Oct 07 until 9 Nov 07 evidencing his improper discharge and shows the conversation around his discharge, the mistakes made in improperly discharging him administratively, and the steps taken after the fact. A memorandum from HQ AFPC/DPPDS, dated 25 Jun 07 and an AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board*, dated 22 Jun 07 both state his condition existed prior to service, which is in direct conflict with the AF Form 618, *Medical Board Report*, dated 30 May 07 and the Department of Veterans Affairs (DVA) findings.

There is documentation with "CORRECTED COPY DESTROY ALL OTHERS" in reference to his discharge paperwork. The simple existence of these types of corrections speaks to the length at which his paperwork needed to be changed after the fact to line up with the events that actually happened. The PEB states his disability is not service-connected and therefore, not compensable or ratable, which is in direct conflict with the MEB and DVA. The AF Form 618, dated 30 May 07 reflects "Incurred While Entitled to Basic Pay – YES" and "Existed Prior to Service – NO."

His DVA Benefit Summary reflects he is paid at the 100 percent rating due to unemployability due to service-connected disabilities, and he is considered to be permanently and totally (P&T) disabled. The letter stated his Bipolar Disorder is at 70 percent, which is the medical condition for which he was discharged. The DVA rating decision stated his DVA examiner indicated his alcohol and polysubstance abuse were secondary and a progression of his primary diagnosis of Bipolar Disorder as he was noted to be likely self-medicating his symptoms with polysubstance and alcohol abuse.

Due to the nature of mental health disorders and the stigma associated with them, it created an environment of hostility and judgment that he believes affected his improper discharge. Due to the nature of mental health and difficulty in evaluating its extent, it is his belief the PEB was incorrect in ignoring the declarations of the MEB and possibly even prejudicially so. The evidence gives credence to the idea there were multiple errors and corrections/cover-ups, or changes of information to fix the narrative so those responsible would be able to have a clean story of what occurred. With those thoughts in mind, he is requesting his discharge status on his DD Form 214 be changed to a medical discharge, he be granted military retirement status based on the DVA P&T rating of 70 percent, and all pay and benefits to which he is entitled.

In support of his request, the applicant provides a personal statement and copies of an AFPC/DPPD letter, dated 9 Nov 07, email correspondence regarding his discharge, documentation from his MEB and PEB, and DVA documents related to his disability benefits.

The applicant's complete submission is at Exhibit A.

## **STATEMENT OF FACTS**

The applicant is an honorably discharged Air Force airman basic (E-1).

On 30 May 07, according to AF Form 618, the applicant was diagnosed with Axis I: Bipolar Disorder I, Line of Duty: Yes; Incurred While Entitled to Basic Pay: Yes; Existed Prior to Service: No; and referred to the informal PEB (IPEB).

On 21 Jun 07, according to AF Form 356, the IPEB found the applicant unfit due to physical disability. He was diagnosed with the following:

- Category II – Conditions That Can Be Unfitting But Are Not Currently Compensable or Ratable: Bipolar I Disorder. Existed Prior to and Not Aggravated by Military Service; Incurred While Entitled to Basic Pay: No; Veterans Affairs Schedule for Rating Disabilities (VASRD) Code: 9432.

On 22 Jun 07, according to AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, the applicant agreed with the findings and recommended disposition of the IPEB and acknowledged he was waiving his right to a formal PEB hearing.

On 25 Jun 07, according to HQ AFPC/DPPD memorandum, Subject: Physical Evaluation, the Secretary of the Air Force directed the applicant be separated from active service for physical disability due to a condition that existed prior to service (EPTS). Member is not entitled to any benefits under the provisions of Chapter 61, Title 10, U.S. Code.

On 26 Jul 07, according to Special Court-Martial Order Number XX, dated 18 Sep 07, the applicant was arraigned for the following offenses:

- Charge I: Article 112a. Plea: NG. Finding: G.
  - Specification 1: [The applicant] did, within the continental United States, between on or about 2 Jun 06 and on or about 5 Jun 06, wrongfully use cocaine. Plea: NG. Finding: G.

- Specification 2: [The applicant] did, within the continental United States, between on or about 23 Jun 06 and on or about 26 Jun 06, wrongfully use cocaine. Plea: NG. Finding: G.
- Charge II: Article 86. Plea: NG. Finding: NG.
- Specification: [The applicant] did, at or near MacDill Air Force Base, Florida, on or about 30 Aug 06, without authority, fail to go at the time prescribed to his appointed place of duty, to wit: the Grayson Action Team Building. Plea: NG. Finding: NG.

The applicant was sentenced to reduction to the grade of airman basic (E-1), forfeitures of \$867.00 pay per month for 4 months, and confinement for 4 months.

On 26 Jul 07, according to CMS 2098, *Duty Status Change*, the applicant's duty status changed from Present for Duty to Military Confinement – Sentenced Prisoner/30 Days or More.

On 2 Nov 07, according to CMS 2098, the applicant's duty status changed from Military Confinement – Sentenced Prisoner/30 Days or More to Present for Duty.

On 2 Nov 07, according to DD Form 214, the applicant was furnished an honorable discharge, with Narrative Reason for Separation: Misconduct (Drug Abuse), Separation Code: JKK [Misconduct – Drug Abuse], Reentry Code: 2C [Involuntarily separated with honorable discharge], and was credited with 5 years, 5 months, and 12 days active service. Dates of lost time during this period: 26 Jul 07 – 1 Nov 07.

According to a HQ AFPC/DPPD letter to the applicant, dated 9 Nov 07, provided by the applicant, he was advised of an error in his release from active duty from the Air Force on 2 Nov 07, and provided an opportunity to apply for correction of that error. He was in the disability channels at the time of his release from active duty and had accepted Discharge with Severance Pay. His administrative separation package and his disability case should both have been forwarded to the Secretary of the Air Force Personnel Council for adjudication.

On 16 Dec 13, according to DVA Rating Decision, provided by the applicant, he was granted service-connection for polysubstance and alcohol abuse, effective 12 Oct 12. The evaluation of Bipolar Disorder with sleep disorder, alcohol and polysubstance abuse, rated at 30 percent disabling was increased to 50 percent, effective 10 Oct 12. An evaluation of 70 percent was assigned from 26 Sep 13.

On 2 Jan 22, according to DVA summary of benefits letter, provided by the applicant, his combined service-connection evaluation is 80 percent, he is considered totally and permanently disabled, and he is being paid at the 100 percent rate because of unemployability due to his service-connected disabilities.

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

## **POST-SERVICE INFORMATION**

On 16 Jan 24, the Board sent the applicant a request for post-service information and advised the applicant he was required to provide a Federal Bureau of Investigation (FBI) Identity History Summary Check, which would indicate whether or not he had an arrest record. In the alternative, the applicant could provide proof of employment in which background checks are part of the hiring process (Exhibit C). The applicant replied on 1 Feb 24 and provided an FBI report. According to the report, the applicant has had no arrests since discharge. The applicant also provided a personal statement, character statements, and letters of appreciation.

The applicant's complete response is 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 Post-Traumatic Stress Disorder (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 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. § 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 U.S.C. § 1552(h)(1) 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 16 Jan 24, Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C). On 4 Jun 24, Board staff provided an updated version of the liberal consideration guidance to include the Vazirani Memo (Exhibit H).

Air Force Instruction (AFI) 36-3208, *Administrative Separation of Airmen*, dated 9 Jul 04:

Section 6E - *Dual Action Processing*.

6.30. *When Dual Action is Required*. Dual action processing involves referral of separation action to the Air Force Personnel Council (AFPC). It is required when an airman subject to involuntary discharge under this regulation also:

6.30.2. Is eligible for disability separation or disability retirement after separation according to AFR 36-2902 (formerly AFR 35-4) *Exception*: See paragraph 1.10.3.

1.10.3. *Decision Pending on Voluntary or Involuntary PETS Separation*. If the separating airman is not medically qualified for worldwide duty, process under AFMAN 48-123, *Medical Examination and Medical Standards* (formerly AFR 160-43). Do not use medical hold according to paragraph 2.6 unless the member's ETS date is near or likely to arrive before medical evaluation is completed. The MPF gives the director of base medical services (DBMS) information about the pending separation.

1.10.3.1. Complete AFI 41-115, *Medical Programs and Benefits* (formerly AFR 168-4) actions before actions in Chapter 2 or Chapter 3, paragraphs 5.9, 5.10, 5.14, 5.26.6, or 5.65

1.10.3.2. If disability separation is approved, separate under AFI 36-2902, *Physical Evaluation for Retention, Retirement, and Separation* (formerly AFR 35-4).

1.10.3.3. If the airman is returned to duty, resume processing under this instruction.

## **AIR FORCE EVALUATION**

AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request for a medical discharge; however, does recommend changing the applicant's Separation Code to JFM [Disability, Existed Prior to Service, PEB, LDES] and his Narrative Reason for Separation to Physical Disability – Existed Prior to Service as Established by Physical Evaluation Board. Not Entitled to Severance Pay.

While the applicant contends his Bipolar Disorder did not exist prior to service, there is sufficient evidence to indicate his Bipolar Disorder was present before his military service. While the MEB initially reported his Bipolar Disorder was not EPTS, the IPEB concluded his Bipolar Disorder was EPTS based on his mental health records.

His Narrative Summary, dated 8 Feb 07, described a pattern of symptoms and behaviors consistent with Bipolar Disorder. His Narrative Summary, evaluations, and encounters document these, noting that during his high school years, pre-military, he would have periods of significant energy and impulsive actions (potential manic episodes). An in-service encounter noted the applicant reported a history of symptoms into late high school, referring to bipolar symptomology. Compensation and Pension (C&P) evaluations document he had impulsive tendencies before service, and he had difficulty interacting and being close to others before the service. A post-service mental health encounter noted, "He was a "good kid" until 7th grade. Then he stopped caring, his grades dropped, no longer interested in school (potential depressive episode), and his getting married was a manic decision."

His mental health DVA ratings over the years, while confirming his bipolar diagnosis, do not support the applicant's contention that an error was committed and his mental health condition of Bipolar Disorder did not exist prior to service. The term "EPTS" (existed prior to service) is added to a medical diagnosis when it shows there is substantial evidence the disease or injury, or underlying condition, existed before military service. In the applicant's case, there is sufficient evidence in his record to determine his Bipolar Disorder was EPTS. Conditions that are found to have existed prior to service, and are not permanently aggravated by military service, are not compensable.

The liberal consideration policies outlined in the Secretary Hagel and Undersecretary Kurta memorandums address a former service member's request to modify their discharge based on a pre-discharge mental health condition and do not apply to disability processing or compensation. Liberal consideration policies do apply to discharge upgrades. The applicant's file contains a document (email) from AFPC/DPPDS (Air Force Personnel Center/Director of Personnel Program Management) with the subject line [applicant's name]. It noted in part: "On 25 Jun 07, officials within the Office of the Secretary of the Air Force determined that member is physically unfit for continued military service due to a physical disability which existed prior to military service and directed discharge without disability benefits. Discharge will be effective 7 Aug 07. Use SPD "JFM" (discharge: disability existed prior to svc-PEB)."

The complete advisory opinion is at Exhibit E.

## **APPLICANT'S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 16 Apr 24 for comment (Exhibit F), and the applicant replied on 29 Apr 24. In his response, the applicant contends the Department of the Air Force supplied 12 bullet points after spending 6 months extensively combing through the hundreds of hours of records in his file, and he is responding with an explanation of the evidence that is either incorrect or used out of context.

In his MEB Narrative Summary, it stated the applicant reported a long history of affective and behavioral symptoms. He related that dating to early high school, he would have 2–8-week periods of significant energy and impulsive actions 2-3 times per year and described his mood during these times as being “way up”, expansive, and happy. He also noted a history of increased sexual activity, spending, reckless driving, decreased impulse control, decreased sleep, increased alcohol use, and goal-directed behavior. The applicant focused on the first sentence, stating the placement of the period at the end lets the reader know the information is a timeline covering his entire history from birth until 2007. The following sentence, which is the Air Force’s evidence, describes normal behavior for any developing adolescent. This is not evidence of Bipolar Disorder, as evidenced in the MEB determination of “in the line of duty.”

The sentence regarding increased sexual activity, spending, etc., describes behaviors that only occurred in military service. In high school, he dated the same girl for over two years, and she was the only person he was sexually active with until he married in the military. Further, he was the safest driver as a teen and parents would only let their kids ride with him because he was known for how safely he drove.

The Medical Board Report, dated 30 May 07, determined he had Bipolar I Disorder with an approximate date of origin of 2006. The MEB stated it was in the line of duty and did not exist prior to service. This is extremely important because the Air Force evidence heavily relies on the MEB findings.

The PEB findings, dated 21 Jun 07, stated his condition existed prior to service and was not aggravated by military service. He began his military career as an honor graduate, went on to be promoted to senior airman, and had zero disciplinary issues or infractions. He had an exemplary career. He had a Top Secret nuclear clearance which took about a year to obtain and was only granted after the federal government took a deep dive into his life prior to military service. That he was granted the clearance is evidence there was nothing in his pre-military history to prevent such a clearance and no doubt he was fit to perform sensitive nuclear tasks for his country. It is important to note the IPEB made an extremely significant change to the evidence provided by the MEB, when they changed the “period” in the first sentence of the Medical Board Report, to a “comma.” This completely changed the context and intent of this information.

On 22 Jun 07, he signed the AF Form 1180 indicating agreement with the IPEB and waiving his right to a formal PEB hearing. It is important to note he was undergoing medication trials at this time, which were being supervised by the prescribing military doctor. He was also being punished by placement on a labor detail for 11 months after being removed from his explosive ordinance disposal duties, though he had not been charged with a crime. During this time, he often existed in a medication side effect and trauma induced haze and was not of sound mind to be signing any documents, let alone ones of this nature and gravity. This document was not explained to him in a manner for him to comprehend. If it had been properly explained, and he had been of sound mind, he would not have signed it.

The memorandum dated 25 Jun 07, directing his separation, provides no new medical evidence and has no bearing on the medical record or discussion at hand.

The note regarding his chart entry dated 5 Sep 06 – life skills clinic, where it states he was diagnosed with adjustment disorder with depressed mood is not relevant to determining EPTS, nor does it support the IPEB findings.

The extensive notes dated 23 Oct 06 reflect a patient history review and is followed by the Medical Board Review. Everything in the summary happened in military service, except for the notes related to early high school. This summary is evidence to support aggravation through military service.

On 7 Nov 06, at the life skills clinic, it notes he was diagnosed with Bipolar Disorder; however, there is no mention of EPTS.

The life skills clinic notes from 1 Nov 07 stated he reported history of symptoms into late high school; however, this information lacks context or further evidence as to what symptoms are being reported, making the intention of this statement obscure. The Air Force included this singular sentence because there was no further evidence to be produced from his life skills clinic records.

The DVA C&P examination notes, dated 26 Sep 13, stated, “[the applicant] feels more likely than not, his difficulty interacting and being close to others probably started before the service...” This statement is vague and widely open to interpretation. He joined the Air Force directly after the attacks on 11 Sep 01. This has always been his reason for joining. It is unknown what interactions or others are being referenced, and the Air Force provided no other information or context from this exam.

The psychiatry outpatient note from 28 Jan 19 reflects his diagnosis with bipolar mania in 2006 while in the Air Force. It describes things that occurred during military service, except the portion regarding his schooling, how he stopped caring about his grades, and his graduation from high school. He did stop caring about his grades when he started caring about girls. He had a 3.7 grade point average and was allowed to transfer to three different high schools to be with his friends. This is another summary that supports in the line of duty. There is no evidence of EPTS.

In conclusion, there is no direct evidence in the medical record that supports his condition existed prior to service. He was first diagnosed with Bipolar Disorder in 2006 during military service. The applicant contended his condition was in the line of duty and aggravated through service; therefore, a medical retirement is warranted.

The applicant’s complete response is at Exhibit G.

## **FINDINGS AND CONCLUSION**

1. The application was not timely filed, but it is in the interest of justice to excuse the delay.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, to include the applicant’s rebuttal, the Board concludes the applicant has presented evidence sufficient to demonstrate an injustice regarding part, but not all, of his request. The Board finds there was an error in the original discharge process in that the applicant’s discharge did not receive dual action processing in accordance with AFI 36-3208, due to his fitness determination and administrative discharge actions occurring at the same time. The Board recommends relief based, in part, on this guidance. In accordance with the Vazirani Memo, the Board conducted a bifurcated review, first applying liberal consideration and finding the applicant’s mental health condition did not contribute to the circumstances of his special court-martial and resulting recommendation for administrative discharge, and the applicant’s mental health condition does not excuse or mitigate his discharge. The Board then assessed his unfitness separately, finding there was evidence to support the applicant’s contention his mental health condition was in the line of duty and/or service aggravated.

In particular, the applicant was found unfit for continued military service, and the Secretary of the Air Force directed his separation for physical disability, prior to his arraignment at special

court-martial and completion of the administrative discharge process; therefore, the Board finds it more appropriate for the applicant to be separated based upon his unfitting condition. However, while the PEB pronounced the applicant's Bipolar Disorder as EPTS, and the AFRBA Psychological Advisor agreed with this outcome, based upon the applicant's comments regarding symptoms experienced during his high school years, the MEB's conclusion differed and determined the applicant's condition to have occurred in the line of duty. The Board concurred with the MEB and found the applicant's self-reported history, without an actual diagnosis of Bipolar Disorder, not compelling. There was no evidence of a Bipolar Disorder diagnosis prior to the applicant's military service. Nor was there any evidence of any significant family disfunction, disruptive behaviors, or reported involvement with the juvenile justice system that are normally associated with an adolescent bipolar condition. Even if this evidence existed, a bipolar condition cannot be presumed without a clinical evaluation. The applicant's first encounter with mental health was towards the end of his military career, in the fall of 2006, when he was hospitalized and diagnosed with Bipolar I, mixed, without psychosis.

The applicant's request for a 70 percent disability rating is not supported by the evidence. The DVA's initial rating of 30 percent, effective 3 Nov 07, is more indicative of the applicant's condition at the time of discharge. The applicant's disability rating for Bipolar Disorder was not increased by the DVA to 70 percent until 26 Sep 13. While the DVA can, under Title 38, evaluate a service member over the years, increasing and/or decreasing ratings based on changes in the service member's medical condition, the Air Force, under Title 10, must determine whether an airman's medical condition renders them unfit for continued military service and apply the disability rating best associated with the level of disability at the time of DES processing. This rating determines final disposition and is not subject to change after separation. The Board finds no basis to recommend granting that portion of the applicant's request. Therefore, the Board recommends correcting the applicant's records as indicated below.

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 pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show:

a. On 21 Jun 07, he was found unfit to perform the duties of his office, rank, grade, or rating by reason of physical disability, incurred while he was entitled to receive basic pay; the diagnosis in his case was Bipolar I Disorder, that his condition was under VASRD code 9432; with a disability rating of 30 percent; the degree of impairment was permanent; the disability was not due to intentional misconduct or willful neglect; the disability was not incurred during a period of unauthorized absence; and the disability was not as a direct result of armed conflict or caused by an instrumentality of war and was not combat-related.

b. On 2 Nov 07, he was discharged from active duty and on 3 Nov 07, he was permanently retired with a compensable percentage for physical disability of 30 percent.

c. His election of the Survivor Benefit Plan option will be corrected in accordance with his expressed preferences and/or as otherwise provided for by law or the Code of Federal Regulations.

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 DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2023-03423 in Executive Session on 17 Jul 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 7 Nov 22.  
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 16 Jan 24.  
Exhibit D: Applicant's Response, w/atchs, dated 1 Feb 24.  
Exhibit D: FBI Report, dated, 13 Feb 24.  
Exhibit E: Advisory Opinion, AFRBA Psychological Advisor, dated 6 Mar 24.  
Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 16 Apr 24.  
Exhibit G: Applicant's Response, dated 29 Apr 24.  
Exhibit H: Letter, SAF/MRBC (Liberal Consideration, Updated), atchs, 4 Jun 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.

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Board Operations Manager, AFBCMR