Work-Product

UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2023-03510

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

He be given a medical separation.

APPLICANT'S CONTENTIONS

He was diagnosed with a Traumatic Brain Injury (TBI) and myasthenia gravis (MG), both when combined with stress and the reprisal case which was found to be justified, led to his demotion and subsequent discharge due to high year tenure (HYT). His myasthenia gravis is a disqualifying condition which exasperated his TBI symptoms, and he should had been medically separated. He was rated by the Department of Veterans Affairs (DVA) as 100 percent disabled.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 19 Nov 18, the applicant's whistleblower reprisal investigation was concluded in which 26 allegations of reprisal and 2 allegations of restriction against 4 responsible management officials by 4 complaints involving 4 cases found 10 allegations of reprisal and 2 allegations of restriction were substantiated. The specifics involving the applicant's portion of this decision are indicated as follows:

> On 10 Apr 17 the applicant filed a complaint of reprisal. He alleged he was punished for speaking up about leadership issues. He was sent to pick up trash, was given a letter of counseling (LOC), was moved to a different work center, and was given a "3" on his Enlisted Performance Report (EPR). The case files indicate the applicant's complaint regarding his EPR was partially substantiated which found on or about 10 Feb 15, some named individuals, influenced/advised flight leadership in giving the applicant an overall "3" rating on his EPR, some of his leadership gave him an overall rating of "3" on his EPR, and some named individuals, influenced/advised flight leadership and/or approved removing his supervisor in reprisal for a protected communication in violation of AFI 90-

301, *Inspector General Complaints Resolution*. The other complaint, alleging certain named individuals influenced command leadership to remove the applicant from his position and/or approved his removal from his position in the Periodic Health Assessment office and transferred him to the Drug Demand Reduction office in reprisal for making a protected communication was not substantiated. The report recommended the applicant's EPR be re-accomplished/replaced to reflect the ratings his previous supervisor made before his removal and recalculate subsequent Weighted Airman Promotion System (WAPS) results and promote as required by new WAPS results.

On 8 Jul 19, the applicant's commander recommended the applicant be administratively demoted, under the provisions of AFI 36-2502, *Airman Promotion/Demotion Programs,* paragraph 6.3.4 for failing to fulfill his responsibilities. The specific reasons for the action were:

a. On 4 Mar 19, a LOC was issued for dereliction of duty by failing to notify his supervisor of his pending leave and due to lack of planning and time management when the applicant agreed to follow up on required training for his flight.

b. On 19 Mar 19, a Letter of Reprimand (LOR) was issued for being severely delinquent in his duties accomplishing only 6 of the 25 Category 2 shop visits, misleading leadership reporting incorrect shop visit numbers, and failing to properly document shop visits. In his response to the LOR, he states his TBI was a contributing factor.

c. On 6 May 19, a LOR was issued for dereliction of duty for failing to follow-up with six of the nine communicable disease patients, upload appropriate dates, add patients to tracking log, and report cases which resulted in busted reporting suspense dates and could have resulted in patients not getting needed care. In his response, he states due to his TBI, he lacks the capacity to perform at the level necessary and failed to make that clear to his leadership.

d. On 10 Jun 19, a LOR was issued for use of racist language, displaying unprofessional behavior, and dereliction of duty by medically clearing individuals not deployment ready. His actions resulted in his removal from his work section, and he was given a no contact order. He again responded to the LOR stating he is seeking treatment for medical issues that are affecting his performance.

On 19 Aug 19, the applicant was afforded a personal appearance to which he accepted full responsibility for his actions. He informed his commander he believed his performance issues were due to his injury and he was seeking treatment off base and working with his providers.

On 26 Aug 19, the Chief of Adverse Actions found the demotion action legally sufficient.

On 11 Sep 19, the applicant appealed the demotion action stating he could not verify the allegation of erroneously clearing members for deployment and he was never given the opportunity to face his accusers who alleged he made racist statements and contributed to a toxic work environment. His defense to these allegations is he suffered from both a TBI and depression. Both of these

medical conditions led to memory loss based on repeated concussions sustained during his time on the flight line.

Dated 4 Oct 19, Special Order Work-Product indicates the applicant was demoted to the grade of senior airman (E-4), effective 9 Sep 19.

On 3 Jan 20, the applicant was medically accessed by the Deployment Availability Working Group (DAWG) and was returned to duty with an assignment limitation code (ALC) requiring a waiver for assignment for all overseas Continental United States (OCONUS) locations. All restrictions and holds imposed by the Review in Lieu Of/Medical Evaluation Board/Physical Evaluation Board (RILO/MEB/PEB) were removed.

On 17 Jan 20, the applicant received an honorable discharge. His narrative reason for separation is "Completion of Required Active Service" and he was credited with 15 years, 11 months, and 14 days of total active service.

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

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 discharge from a psychological perspective. The applicant was diagnosed with mental health conditions while in service. His mental health diagnoses include partner relational problem, depression, unspecified depressive disorder, dysthymic disorder, and adjustment disorder. He was also determined to have symptoms of Post-Traumatic Stress Disorder (PTSD), but it is unclear if he ever met the full criteria for a PTSD diagnosis. Regardless, there is insufficient evidence the applicant was unfit for duty during his service or at discharge from a psychological perspective.

Being diagnosed with a mental health condition and receiving mental health treatment do 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 his records. His mental health encounters regularly determined and documented his fitness for duty from a psychological perspective. His mental health encounters regularly noted he was released without limitations and his mental health condition did not appear to impair his judgment, stability, or reliability.

Additionally, while the applicant received several reprimands, his performance evaluations always remained adequate (met expectations) to exemplary (exceeded expectations in most areas). Therefore, there is insufficient evidence the applicant was not able to perform the duties of his office, grade, rank, or rating, from a psychological perspective. While the applicant was rated for

TBI by the DVA (with mental health-related issues being unable to be separated out) 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.

The complete advisory opinion is at Exhibit C.

The AFBCMR Medical advisor recommends denying the application finding insufficient evidence the applicant was a victim of an error or injustice in his administrative separation. Secondary to having a medical condition that was potentially unfitting, his pre-DES processing through the DAWG was appropriate and in line with regulatory guidance. A post-service DVA disability impairment rating is not synonymous or indicative proof the same should have been accomplished in a full MEB in the military's disability evaluation system near the time-of-service separation. The burden of proof is placed on the applicant to submit evidence to support his contentions/request. The evidence he did submit was assessed to not support his request for correction of separation to a medical disability retirement. The medical decisions, and overall administration separation process was fair and appropriate without evidence of an applied error or rendered injustice.

The applicant petitions the Board to upgrade his separation from HYT to a medical discharge claiming the diagnoses of a TBI and MG when combined with generalized stress and coupled with a reprisal led to an inability to adequately perform his duties. In many encounters, it was the applicant himself that reported having experienced multiple concussions during his military career; however, the record evidence only documented a single episode of a head injury in 2017 when he ran into a wooden beam. On one encounter the applicant did report being hit in the head by a tow bar, but there was no recorded evidence of that stated incident.

MG is a chronic autoimmune disorder in which antibodies destroy the communication between nerves and muscles, resulting in weakness of the skeletal muscles, especially following exertion. MG affects the voluntary muscles of the body, especially those that control the eyes, mouth, throat and limbs. There are two clinical forms of this disease, ocular (eye) and generalized. In ocular MG, muscle weakness often first appears in the muscles of the eyelids and other muscles that control movement of the eye (extraocular muscle). In generalized MG, the weakness involves the ocular muscles and a variable combination of the arm, legs, and respiratory muscles. According to the Muscular Dystrophy Association (MDA), blood testing for the diagnosis of MG checks for the presence of antibodies. If a physical examination is possibly consistent with MG, a blood test

designed to detect antibodies to the acetylcholine (Ach) muscle receptor is usually ordered. A blood test for muscle-specific tyrosine kinase (MuSK) antibodies is also obtained. In approximately 90 percent of individuals with MG, a positive blood test result (the presence of the antibodies) confirms the diagnosis of MG. However, in 6 to 12 percent of individuals with MG, they may test negative for both AchR antibodies and MuSK antibodies. These individuals have seronegative MG and are more likely to have ocular MG than those who are seropositive with generalized MG. In this case, the definitive diagnosis of MG was not firmly established for all laboratory work-up for a definitive diagnosis was normal. However, with the presence of his ocular symptoms (with minimal extra-ocular symptoms) coupled with a good response to the trial of medication to treat such a condition, indeed indicates to a significant degree of certainty, the applicant fell within the reported 6 to12 percent who are antibody negative, and thereby being inflicted with the milder form of MG.

First, according to the Medical Standards Directory as well as DoDI 6130.03, Volume 1, *Medical Standards for Military Service: Appointment, Enlistment, or Induction*, MG is disqualifying both for enlistment and retention, but possibly waiverable. However, that is for MG, the generalized type and not ocular MG. This case clearly, in the absence of antibodies and constitutional known laboratory analysis, was consistent with the ocular type. Having a medical condition of any type that could have been "potentially" unfitting should be submitted to and reviewed by the DAWG, which was properly accomplished in this case and was determined his condition labeled as MG was not unfitting and thus, he was returned to duty with an ALC two weeks prior to him being administratively separated for failure to fulfill the duties of a non-commissioned officer.

In addressing the applicant's claim a MG condition had an exacerbating effect on symptoms known to occur with a TBI as well as outside stress was not in evidence to any plausible degree of certainty. The Medical Advisor opines the mild and intermittent degree of ocular MG symptoms seen in this case had no exacerbation nexus to TBI or stress in relation to his failure of military duties.

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 16 Jul 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 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. The mere existence of a mental health diagnosis does not automatically determine unfitness and eligibility for a medical separation or retirement. Even though the applicant was diagnosed with mental health conditions to include partner relational problem, depression, unspecified depressive disorder, dysthymic disorder, and adjustment disorder and exhibited symptoms of PTSD, the Board finds the applicant's military duties were not degraded due to his mental health condition nor did they prevent him from reasonably performing the duties of his office, grade, rank, or rating. Additionally, the Board finds his medical condition of ocular MG mild in nature and had no nexus to TBI or stress in relation to his failure of military duties. He was properly evaluated by the DAWG which returned him to duty with an assignment limitation code. Lastly, the Board took note of the applicant's reprisal allegations and reviewed the case files; however, did not find plausible evidence to support his contention his mental health was impacted by this which led to his behavioral issues resulting in his demotion. He may have been going through a stressful period; however, his dereliction of duty which led to his demotion was well documented and happened after the Inspector General's investigation was concluded. Therefore, the Board recommends against correcting the applicant's records.

4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

RECOMMENDATION

The Board recommends informing the applicant the 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-2023-03510 in Executive Session on 22 Aug 24:

Work-Product anel Chair
Panel Member
Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 18 Sep 23.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 26 Apr 24.
Exhibit D: Advisory Opinion, AFBCMR Medical Advisor, dated 11 Jul 24.
Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 16 Jul 24.
Exhibit F: Report of Investigation – WITHDRAWN

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.

9/11/2024

Work-Product

Board Operations Manager, AFBCMR
Signed by: USAF