

## **ADDENDUM TO RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2023-00614

XXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** YES

### **APPLICANT'S REQUEST**

The Board reconsider his request to amend his official military personnel record to reflect a finding of in the line of duty (ILOD) for Post-Traumatic Stress Disorder (PTSD), a medical retirement for PTSD, and compensation for all pay, benefits, and entitlements due to retirement at onset of PTSD diagnosis.

### **RESUME OF THE CASE**

The applicant is a retired [State] Air National Guard technical sergeant (E-6) awaiting retired pay at age 60.

On 20 Dec 23, the Board considered and denied his request to amend his official military personnel record to reflect a finding of ILOD for PTSD, a medical retirement for PTSD, and compensation for all pay, benefits, and entitlements due to retirement at onset of PTSD diagnosis finding the applicant had provided insufficient evidence of an error or injustice to justify relief. There was no evidence in the applicant's electronic health record or submitted by the applicant that indicated his PTSD was incurred ILOD. To the contrary, the applicant's Post-Deployment Health Assessment and Post-Deployment Health Reassessment indicated he had no medical/mental health concerns related to his deployment in support of Hurricane Katrina Relief. Additionally, the applicant was afforded due process via the informal Physical Evaluation Board (IPEB) and formal PEB (FPEB) processes, where he acknowledged his condition was non-duty status related, and agreed with the FPEB unfit determination, electing not to rebut.

For an accounting of the applicant's original request and the rationale of the earlier decision, see the Air Force Board for Correction of Military Records (AFBCMR) Letter and Record of Proceedings at Exhibit I.

On 27 Mar 24, the applicant requested reconsideration of his request to amend his official military personnel record to reflect a finding of ILOD for PTSD, a medical retirement for PTSD, and compensation for all pay, benefits, and entitlements due to retirement at onset of PTSD diagnosis. The applicant contends his previous application was denied based primarily on a three-year time limit and refers to the Secretary Hagel memorandum regarding the AFBCMR's role for applications that involve PTSD. He again contends his command should have initiated an ILOD investigation when the applicant reported symptoms of PTSD. The applicant provided all civilian medical records to the medical squadron prior to his discharge, and the applicant obtained a true copy of his entire medical record, which includes documentation of medical issues. Additionally, Department of Defense guidance clearly states members who are diagnosed with PTSD years later will be carefully considered, regardless of the three-year time limit. The Department of Veterans Affairs (DVA), civilian doctors, and other medical professionals have all opined the applicant's PTSD is the direct result of military service. The applicant's command repeatedly refused to conduct an ILOD determination investigation, which is against Air Force

Instruction 36-2910, *Line of Duty (LOD) Determination, Medical Continuation (MEDCON), and Incapacitation (INCAP) Pay*.

In support of his reconsideration request, the applicant submitted the following new evidence: (1) a copy of the Secretary of Defense memorandum, Subject: Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post-Traumatic Stress Disorder, dated 3 Sep 14 (Hagel Memo); (2) DVA Review Post-Traumatic Stress Disorder (PTSD) Disability Benefits Questionnaire, dated 6 Mar 23; and (3) DVA Rating Decision, dated 19 Sep 23.

The applicant's complete submission is at Exhibit J.

## **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 18 Oct 24, Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit K).

The applicant replied on 21 Oct 24, providing medical documentation, excerpts from his military human resource record, post-service employment documentation, and DVA correspondence in support of his request for liberal consideration (Exhibit L).

## **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 remains unconvinced the evidence presented demonstrates an error or injustice. Liberal consideration was not applied in accordance with the Vazirani memorandum regarding fitness determinations. The applicant was afforded due process via the previous PEB process, and he provided no evidence that warranted amendment of the FPEB decision. Further, while the applicant provided updated DVA documentation related to his PTSD-based benefits and entitlements, it is not sufficient to overturn the previous Board's decision. The Air Force and the DVA disability systems operate under separate laws. Under 10 USC, the PEB must determine if the service member's condition renders them unfit for continued military service. To be unfitting, the condition must be such that it alone precludes the member from fulfilling their military duties. Under 38 USC, the DVA 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. 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-2023-00614 in Executive Session on 19 Feb 25:

, Panel Chair  
, Panel Member  
, Panel Member

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

Exhibit I: Record of Proceedings, w/ Exhibits A-H, dated 3 Jan 24.  
Exhibit J: Application, DD Form 149, w/atchs, dated 27 Mar 24.  
Exhibit K: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 18 Oct 24.  
Exhibit L: Applicant's Response, w/atchs, dated 21 Oct 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