RECORD OF PROCEEDINGS

IN THE MATTER OF: XXXXXXXXXXXX

DOCKET NUMBER: BC-2023-03577

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His official military personnel record be amended to reflect a medical retirement based on Post-Traumatic Stress Disorder (PTSD).

APPLICANT'S CONTENTIONS

His request is based on a PTSD diagnosis while active duty and four post-discharge diagnoses by a Department of Veterans Affairs (DVA) psychologists. His combat PTSD resulted from a suicide bombing incident in Khost, Afghanistan in Dec 09. The nature of military service exposes members to extreme traumas, sometimes leading to severe PTSD. While on active duty, he faced such trauma during a devastating suicide bombing incident, and prior to that, as a counter-improvised explosive device investigator in Iraq. In Iraq, he faced multiple combat incidents as the fourth member of an Explosive Ordinance Disposal special investigative team known historically as a Weapons Intelligence Team. The PTSD he developed was both recognized and diagnosed multiple times by Department of Defense (DoD) and DVA psychologists. He was still sent on additional combat deployments, after being diagnosed the first time.

Admittedly, he consumed marijuana after returning home from this combat deployment, which is against policy. However, it was an ill-advised attempt to self-medicate and cope with trauma and suicidal ideation. His poor judgment, using marijuana, was a desperate attempt to mitigate this disorder's crippling effects, including insomnia, flashbacks, dissociative effects, and suicidal ideation. The violation was a result of trauma, not defiance.

Delay of this filing to 11 years post-discharge is due to not knowing a PTSD diagnosis could be permanently and totally disabling. Initial disability was awarded at 70 percent disabling, dated at discharge. This is incongruent with the SAF/MRBP's findings that there was no causal relationship between decision making and medical conditions. It is feasible misdiagnosis occurred during active service due to professional misunderstanding/misrepresentation of PTSD symptoms and their impacts on decision making processes. The Medical Evaluation Board (MEB) was not offered PTSD evidence but rather, restricted evidence of a sole mental health disorder, anxiety, which may have prejudiced the decision of SAF/MRBP.

He was honorably separated after a Secretary of the Air Force dual action process and has seen DVA psychologists routinely since, and all continue to document severe combat-related PTSD diagnoses. His PTSD was first diagnosed in 2008, post-Operation IRAQI FREEDOM return. He urges the Board to recognize this and correct his record to reflect a medical retirement, ensuring just compensation for the mental wounds he sustained in service. Granting a full medical retirement would right this oversight, honoring the profound sacrifices made and affording his family retirement benefits.

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 7 Jun 11, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of Air Force Instruction (AFI) 36-3208, *Administrative Separation of Airmen,* paragraph 5.54. *Drug Abuse*. The specific reasons for the action were:

- Between on or about 5 Jul 10 and on or about 23 Aug 10, [the applicant] wrongfully used marijuana.

On 8 Jun 11, according to AF IMT 618, *Medical Board Report*, the applicant was diagnosed with anxiety disorder, personality disorder, pain disorder associated with both psychological factors and general medical conditions (inguinal neuritis), and other substance dependence. The applicant was referred to the informal Physical Evaluation Board (IPEB).

On 26 Jul 11, according to AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board (Informal)*, the applicant was found unfit because of physical disability and diagnosed with:

- Category I – Unfitting Conditions Which Are Compensable and Ratable:
  - Anxiety Disorder, NOS [Not Otherwise Specified] and Pain Disorder associated with Psychological Factors; Incurred While Entitled to Receive Basic Pay: Yes; Line of Duty: Yes; Disability Compensation Rating: 10 percent; Veterans Affairs Schedule for Rating Disabilities (VASRD) Code: 9413; Combat-related: No
  - Left Inguinal Neuralgia, S/P Triple Neurectomy/Neuroplasty; Incurred While Entitled to Receive Basic Pay: Yes; Line of Duty: Yes; Disability Compensation Rating: 10 percent; VASRD Code: 8530; Combat-related: No

- Category III – Conditions That Are Not Separately Unfitting and Not Compensable or Ratable:
  - Opioid Dependence, in early full remission
  - Sedative, Hypnotic, Anxiolytic Dependence, in early full remission
  - Personality Disorder, NOS

The applicant was recommended for Discharge With Severance Pay (DWSP) with a combined compensable disability rating of 20 percent.

On 11 Aug 11, 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 waived his right to a formal PEB hearing.

On 10 Nov 11, an Administrative Discharge Board was convened under AFI 36-3208, and recommended the applicant be discharged from the Air Force with an honorable service characterization.

On 20 Jan 12, the Staff Judge Advocate found the Administrative Discharge Board proceedings legally sufficient.

On 23 Jan 12, the discharge authority concurred with the recommendation of the Administrative Discharge Board and directed the applicant be discharged from the Air Force with an honorable service characterization pursuant to AFI 36-3208, paragraph 5.54..

On 2 Feb 12, according to an AFPC/DPSOS memorandum, Subject: Administrative Discharge "Dual Action", execution of the approved discharge was deferred pending the outcome of the required dual action processing.

On 3 Feb 12, according to an AFPC/DPSDD memorandum, Subject: Review of Physical Evaluation Board Proceedings, the PEB proceedings and allied documents were forwarded for dual action.

On 8 Mar 12, according to a SAF/MRBP memorandum, Subject: Dual Action, AFI 36-3212 [*Physical Evaluation for Retention, Retirement, and Separation*] and AFI 36-3208, the Secretary of the Air Force Personnel Council (SAFPC) reviewed the dual action request and the Secretary of the Air Force directed the applicant be discharged by execution of the approved AFI 36-3208 action, terminating the action under the provisions of AFI 36-3212.

On 15 Mar 12, the Staff Judge Advocate found the discharge action legally sufficient.

On 16 Mar 12, the discharge authority directed the applicant be discharged under the provisions of AFI 36-3208, paragraph 5.54. with an honorable service characterization. The applicant was not eligible for probation and rehabilitation; therefore, they were not offered.

On 26 Mar 12, the applicant received an honorable discharge. His narrative reason for separation is "Misconduct (Drug Abuse)" and he was credited with 11 years, 3 months, and 15 days of total active service.

On 11 Oct 13, according to a DVA Rating Decision, provided by the applicant, he was granted service-connection for PTSD (also claimed as major depressive disorder, anxiety, and insomnia) and granted an evaluation of 70 percent, effective 27 Mar 12.

On 21 Oct 15, according to a DVA Rating Decision, provided by the applicant, his evaluation of PTSD, with secondary major depressive disorder, which was currently 70 percent disabling, was increased to 100 percent, effective 13 Jul 15.

On 23 Nov 20, according to a DVA Rating Decision, provided by the applicant, evaluation of his PTSD, with secondary major depressive disorder, was continued at 100 percent.

On 7 Dec 22, according to a DVA Rating Decision, provided by the applicant, he was granted basic eligibility to Dependents' Educational Assistance based on permanent and total disability status, established from 13 Jul 15. Evaluation of his PTSD, with secondary major depressive disorder, was continued at 100 percent.

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 25 Jul 18, the Under Secretary of Defense issued supplemental guidance 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 the supplemental guidance, paragraphs 6 and 7.

On 15 Nov 23, Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

AIR FORCE EVALUATION

AFRBA Psychological Advisor, having considered the entire record, including the applicant's submissions and contentions, and all pertinent materials, finds insufficient evidence has been presented to support the applicant's request for a medical retirement/disability.

While the IPEB initially rated the applicant at 10 percent for an unfitting mental health condition (anxiety disorder, NOS), this psychological advisor opines the applicant does not have an unfitting condition from a psychological perspective. After thoroughly reviewing the applicant's entire military and medical record, there is sufficient evidence to suggest the applicant was over-endorsing his mental health symptoms potentially for secondary gain. While he was initially diagnosed in-service with PTSD, this was removed as he did not meet the criteria for PTSD and was later diagnosed with anxiety disorder. Again, there is evidence to suggest the mental health condition the applicant exhibited was a significant embellishment of symptoms. It is noted throughout his medical record and on his narrative summary his motivation to exaggerate his mental health symptoms. His mental health encounters noted:

- When the applicant wished to deploy, his symptoms resolved, and he reported being stable on his medication (17 Jul 09).

- World-wide qualified with no Duty Limiting Conditions (24 Jul 09).

- Applicant clearly states he hopes to be medically separated in order to avoid administrative separation (5 Jan 11).

- He also appears to embellish symptom reporting in order to meet criteria for multiple diagnoses (including Bipolar Disorder and PTSD) (5 Jan 11).

- Additionally, his report of symptoms continues to seem to be somewhat rehearsed.

- Patient reports he is still hoping to get a diagnosis of PTSD and he desperately wants to be treated for PTSD (5 Jan 11).

- Patient does not have a diagnosis of PTSD nor has he had a diagnosis of PTSD except for one provider who later removed the diagnosis of PTSD (17 Feb 12).

- Patient is known to have secondary gain with acquiring a diagnosis of PTSD (17 Feb 12).

- Patient is also known to be malingering (17 Feb 12).

- Patient is a very poor candidate for testing because he has researched and learned what questions are all in psychological testing and how to answer those questions to get the diagnosis he desires (17 Feb 12).

- Medical Separation Clearance - Patient with several well-documented medical conditions reports currently stable and doing well. Released without limitations (21 Mar 12).

- Over the course of treatment, the patient received multiple diagnoses including anxiety disorder, bipolar disorder, adjustment disorder, PTSD. It was later determined the patient was over-reporting symptoms of PTSD (19 Apr 12).

- Patient scored extremely high on a malingering test and eventually admitted he was faking symptoms (19 Apr 12).

His narrative summary and addendum, dated 10 Feb 11 and 10 Jun 11, respectively, summarize and confirm the findings the applicant was over-endorsing and/or fabricating his mental health symptoms. His narrative summary noted:

- His initial diagnosis was PTSD but was changed to Anxiety Disorder NOS on 16 Apr 08, because he no longer met criteria for PTSD.

- It was determined he was fit to deploy; he did deploy, he had no reported mental health visits in theater, and he presented back to Ramstein Mental Health Center in Apr 10. He said he did well while deployed. The applicant reported he was at or near two suicide bombings but had no PTSD symptoms.

- He denied recurrence of PTSD symptoms, though his anxiety was often piqued by interpersonal difficulties at work and at home.

- He was taken to the Office of Special Investigations for "legal problems" (later disclosed as marijuana use) but he did not feel comfortable discussing these because he had not spoken to a legal advisor yet.

- He appeared to embellish symptom reporting in order to meet criteria for multiple diagnoses.

- Neuropsychological testing showed a tendency to try to appear worse than he actually was, at least a moderate level of pathology, and a 99.9% chance of malingering.

- Service member's "current condition appears to be directly related to his 'fall from grace' in which he feels others are judging him (and he judges himself) harshly. This appears to have led to over-reporting of symptoms in order to meet criteria for other psychiatric disorders (such as Bipolar Disorder or PTSD) with clear secondary gain of increased disability compensation and/or avoidance of administrative separation from his use of an illegal substance."

- It was noted at Walter Reed Medical Center the applicant was notably "over-endorsing symptoms" and "demanded multiple medication combinations or increasing dosages of medications."

Based on the above evidence and review of his entire record, this psychological advisor agrees with the previous SAF/MRBP findings there was no causal relationship between the applicant's medical condition and his misconduct and there were insufficient mitigating factors to disregard the disciplinary action.

Additionally, the applicant's record demonstrates evidence he was fit for military service during his time in service and at discharge. His mental health encounters regularly released him without limitations (he was placed on a temporary profile for medication stabilization). He was medically evaluated and was cleared for administrative separation (indicating his mental health and his physical condition were not factors in his misconduct). His performance evaluations consistently indicate exemplary performance. He was consistently rated a 5 out of a possible 5 on all but two evaluations, and on both of these, his performance was still documented as meeting standards (it was his conduct which caused a lower rating [underage drinking, driving on a suspended license, financial irresponsibility, and wrongfully using marijuana]). It is important to note after his lowered performance evaluation for marijuana usage (13 Aug 10 - 12 Aug 11), on his next and last evaluation, he received one of his most stellar ratings, one month before discharge (13 Aug 11 - 3 Feb 12). He again demonstrated exemplary performance in all areas earning an overall rating of 5 out of a possible 5 and the highest marks in all areas. This demonstrates he was fit for duty and able to perform his duties according to his office, grade, rank, and rating.

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 (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 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. Being diagnosed with a mental health condition and receiving mental health treatment does not automatically render a condition unfitting.

While the applicant stated in his application and in medical/military records that he used marijuana to self-medicate, there is some evidence he used marijuana during his entire career in the military, which would include the time before his deployments, where he contends he developed mental health symptoms. The civilian contracted case manager with the XXth Medical Group testified [at the applicant's Administrative Discharge Board] after being sworn in, she was aware the applicant had used marijuana his entire career. She noted:

"In my conversations with [the applicant], he told me that he had tested positive for marijuana and that he had already lost a stripe and that he had gotten a reduction in pay and the decision had not yet been made as to whether or not to administratively discharge him. It didn't seem like that big of a deal to him that he had gotten caught. Yes, it was, he had gotten caught. The very first time I met him, he was a little grandiose in his thinking, making statements like he only got caught when he chose to get caught and that he had smoked marijuana during his entire career or a lot of his career and that he could give the Air Force lessons on how airmen do not test positive when they don't want to. He said that when he retired, he would choose a state to live in that had legalized marijuana."

While using marijuana to self-medicate can be part of the sequalae of symptoms associated with mental health conditions to manage symptoms, due to the applicant's documented exaggerated mental health symptoms, it is difficult to determine the extent of his symptoms, as well as his actual mental health diagnosis. Additionally, there is evidence he used marijuana (court testimony) before his deployments in which he reportedly developed mental health symptoms. This indicates he used marijuana without the purpose of self-medicating. Therefore, there is no nexus between his misconduct (drug abuse) and his mental health conditions. There are no psychological factors that would mitigate his misconduct.

After considering the entire record and contentions, there is insufficient evidence to suggest the applicant had any mental health condition that would mitigate his misconduct. A review of the available records finds no error or injustice with the applicant's discharge and insufficient evidence has been presented to support the applicant's request. Liberal consideration is applied to the applicant's petition due to the contention of a mental health condition. The following are responses to the four questions from the Kurta Memorandum based on information presented in the records:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
The applicant on his application stated he has PTSD.

2. Did the condition exist, or experience occur, during military service?
At discharge from the military, the applicant was diagnosed with anxiety disorder, pain disorder with both psychological factors, and due to a general medical condition, other substance dependence, and personality disorder NOS. He was diagnosed with PTSD, but this diagnosis was discontinued as he no longer met the criteria for this diagnosis.

3. Does the condition or experience excuse or mitigate the discharge?
While using marijuana to self-medicate can be part of the sequalae of symptoms associated with mental health conditions to manage symptoms, due to the applicant's documented exaggerated mental health symptoms, it is difficult to determine the extent of his symptoms, as well as his actual mental health diagnosis. Additionally, there is evidence he used marijuana (court testimony) before his deployments in which he reportedly developed mental health symptoms. This indicates he used marijuana without the purpose of self-medicating. Therefore, there is no nexus between his misconduct (drug abuse) and his mental health conditions. There are no psychological factors that would mitigate his misconduct. The SAF/MRBP reached the same conclusion on 8 Mar 12 when they were considering dual action. They determined there was no causal relationship between the applicant's medical condition and his misconduct and there were insufficient mitigating factors to disregard the disciplinary action.

4. Does the condition or experience outweigh the discharge?
Since the applicant's mental health condition does not excuse or mitigate his discharge, the applicant's condition also does not outweigh the original discharge.

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 15 Nov 23 for comment (Exhibit E), and the applicant provided an undated rebuttal. In response, the applicant's spouse, on his behalf, contends they have been married since Jun 07. They have a long history, and she has been his caregiver multiple times since he has been hospitalized multiple times for mental and physical needs. Something that seems to have been lost through the applicant's struggles are his physical ailments and chronic pain from nerve damage which have led to ongoing challenges

managing his mental health. Even after discharge, the applicant has ongoing surgeries to manage the nerve damage to his abdomen and back.

His spouse provided details regarding the applicant's assignments and deployments in support of the Army, Navy, and Air Force. When the applicant returned from Iraq, he did not sleep well, was always on guard, had surgery to correct a couple of hernias that he returned with, and had a series of medical procedures to correct lower back pain he experienced. This was the first time his spouse saw the applicant so distraught he actually went to see mental health providers. This was also the first time his spouse had ever seen or heard of anyone being prescribed opioid pain killers, benzodiazepines, anti-depressants, anti-psychotics, SSRIs, SNRIs, sedative hypnotics, and tricyclic anti-depressants all at once. She helped the applicant manage all of these substances and once he was juggling all of them at the same time, he became like a walking zombie. While not an exhaustive list, these medications included: clonazepam, alprazolam, lorazepam, zolpidem, doxepin, buspirone, chloral hydrate, divalproex sodium, diazepam, quetiapine, morphine, oxycodone, hydromorphone, and fentanyl. The applicant was being forced to take tests and talk to administrative staff who were taking notes working to remove him from the Air Force while he was drugged up like a zombie.

The applicant deployed while taking three medications and told her many other members of his team also had access to sleeping pills, pain pills, and anti-depressants. When he returned from Afghanistan, alone with no real redeployment home process in place, he immediately went to visit mental and physical health providers. All of them issued the applicant medications again, and the list of medications became so long, she had to educate herself on what they all were and how they affected the applicant. He became a zombie version of her husband again. He was more depressed than she had ever seen him. He cried or was angry a lot, on guard, and slept very little. The applicant's spouse recounted an incident where she came home and smelled marijuana from their garage. The applicant was in the garage with a friend who said he found the applicant with a noose around his neck, sitting on the couch, staring at the ceiling and crying. The applicant said he was so desperate for sleep after putting the noose on his neck, when his friend offered him the marijuana, he smoked it.

Upon learning of the applicant's positive urinalysis, she did her own research and learned his THC [tetrahydrocannabinol] levels were on par with his story of consuming a couple of times over a period of a few weeks in Jul/Aug 10. The applicant assured her he only engaged in this behavior to help him sleep through the night for the first time in months. His drug use was unequivocally experimentation and youthful indiscretion. He would not have engaged in this behavior if he had been offered appropriate medical treatment at the time. She later learned while the applicant was in an in-patient mental health unit for the first half of 2011, his doctor prescribed Marinol and assisted the applicant with lowering the doses of almost all his other medications. Marinol is a synthetic, medically prescribable form of THC, which contains the primary psychoactive component of marijuana. The military that was discharging the applicant for consuming THC, prescribed him THC.

Per his spouse, the applicant was diagnosed numerous times with combat-related PTSD. The doctors who diagnosed him were psychologists who had experience treating more patients than those at the local clinic at Work-Product Force Base. The doctors who consistently diagnosed him over a period of years (2008-2012) worked within clinics at Landstuhl Regional Medical Center, Walter Reed Military Medical Center, and the Houston DVA Medical Center. All of these doctors were exposed to military patients from multiple services, in much higher numbers than those at a small, local clinic. He was not a malingerer, rather, he was an excessively medicated, trauma stricken, young person who was completely out of place at an Air Force installation. The applicant's responses to tests and staff members were out of the norm due to his near constant state of inebriation from the prescribed drugs all while he was working to focus on

an administrative discharge rather than his medical care, due to the substance he used to help him sleep. Politics over medical care is what she witnessed as a military spouse.

Regarding the advisory opinion, the notes made in Apr 12 are entirely false. Multiple bullet points reference 19 Apr 12; however, the applicant was not in the area for these occurrences. At no time did he say he was faking anything. These are patently false statements made by Air Force personnel to ensure the applicant would be denied care, kicked out, and banished rather than treated like a human who was suffering. The applicant received a 70 percent rating, dated back to the day after his discharge. How can someone not have PTSD the day before, then be rated independently by multiple DVA psychologists over the course of two years as having combat-related PTSD? Politics, that's how. The DVA doctors have consistently, for the last 11 years, taught his spouse about his combat-related PTSD. His medical board package was never referred to the DVA for rating consideration or discussion. The applicant is now considered 100 percent permanently and totally disabled by the DVA for his combat-related PTSD and his physical ailments. He served, deployed, and even took life on behalf of the United States government. His prior deployment commanders acknowledge this and are helping to support the applicant through the Air Force Board for Correction of Military Records (AFBCMR) process.

The applicant's complete response is at Exhibit F.

FINDINGS AND CONCLUSION

1. The application was not 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 of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant received due process via the Air Force DES and was found unfit due to physical disability with a combined disability rating of 20 percent, insufficient to warrant a medical retirement, and a recommended disposition of DWSP. Additionally, there is sufficient evidence to suggest the applicant was over-endorsing his mental health symptoms, potentially for secondary gain. It is noted throughout his medical record and on his NARSUM his motivation to exaggerate his mental health symptoms. The applicant agreed with the findings and recommended disposition of the IPEB and waived his right to a formal PEB hearing.

Due to the concurrent processing of his disability package and administrative discharge for misconduct, his separation was reviewed by SAFPC under the dual action provision, in accordance with established guidance, resulting in his administrative discharge under AFI 36-3208. SAFPC found, and this Board concurs, there was no causal relationship between the applicant's medical condition and his misconduct, and there were insufficient mitigating factors to disregard the disciplinary action. Liberal consideration was applied by the AFRBA Psychological Advisor; however, due to the nature of the applicant's request, liberal consideration is not applicable.

Finally, the Air Force DES, by law, 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 and not based on post-service progression of disease or injury. Being diagnosed with a mental health condition and receiving mental health treatment does not automatically render a condition unfitting. 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. Therefore, the board recommends against correcting the applicant's records. The Board also 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, U.S.C., and Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. While the applicant asserts a date of discovery within the three-year limit, the Board does not find the assertion supported by a preponderance of the evidence. The Board does not find it in the interest of justice to waive the three-year filing requirement and finds the application untimely.

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 application was not timely filed; it would not be in the interest of justice to excuse the delay; 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-2023-03577 in Executive Session on 17 Jul 24:

, Panel 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 27 Oct 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 15 Nov 23.
Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 9 Nov 23.
Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 15 Nov 23.
Exhibit F: Applicant's Response, undated.

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