RECORD OF PROCEEDINGS

IN THE MATTER OF: XXXXXXXXXX

DOCKET NUMBER: BC-2023-03608

COUNSEL: XXXXXXXXXX

HEARING REQUESTED: NOT INDICATED

APPLICANT'S REQUEST

His official military personnel records be amended:

a. To reflect a military disability retirement, or in the alternative;

b. To refer the applicant to the Integrated or Legacy Disability Evaluation System (IDES/LDES) for further evaluation of his service-connected injuries.

APPLICANT'S CONTENTIONS

Per applicant's counsel, the applicant's case presents compelling grounds for relief, as his Air Force service has been characterized by a litany of failures by his command and leadership. Despite being eventually separated through a hardship discharge, he should have been more properly evaluated for his service-connected injuries prior to separation in an effort to provide him with medical treatment and services he earned through his service.

First, the applicant was unjustly denied a Separation History and Physical Examination (SHPE) as stipulated by Department of Defense Instruction (DoDI) 6040.46, *The Separation History and Physical Examination (SHPE) for the DoD Separation Health Assessment (SHA) Program*. This omission not only contrasts sharply with established military protocols but leaves him in a position of potential disadvantage concerning his military benefits and future endeavors.

Furthermore, the neglect shown by the applicant's leadership in referring him to a Medical Evaluation Board (MEB), despite his evident service-connected conditions, stands in breach of the guidelines established within both Air Force and overarching DoD regulations. Such an oversight is not trivial. This lapse bears severe implications for his potential medical retirement benefits and post-service medical care. Moreover, the unfolding of events post this oversight, specifically the misuse of a medical profile for an unspecified anxiety condition and subsequent denial of SHPE, hints at retaliatory actions. The timeline reveals a concerning pattern wherein these actions conspicuously follow the applicant's previous Inspector General (IG) complaints, drawing us into the realm of potential violations of the Military Whistleblower Protection Act (MWPA).

Finally, while the applicant's hardship separation appears, at first glance, to be a recognition of his profound struggles, the absence of due process surrounding his medical conditions casts a shadow over its legitimacy. In essence, this Board is confronted with a situation wherein a commendable service member's rights, benefits, and future medical treatment of service-connected injuries are jeopardized due to procedural lapses, potential retaliatory actions, and a lack of due process. Accordingly, we respectfully request the Air Force Board for Correction of Military Records (AFBCMR) considers changing the nature of the applicant's discharge to reflect military disability retirement, or alternatively, refer him into the IDES for further evaluation.

By Jun 14, the applicant was assigned to the [State] Air National Guard (ANG). After being station with the XXXth Expeditionary Operations Squadron (XXX EOS) between Oct 16 and

May 17, he began exhibiting Post Traumatic Stress Disorder (PTSD) symptoms, primarily due to his exposure to a mission involving the tragic death of a child. The Flight Surgeon recommended PTSD evaluation upon his return. While the Department of Veterans Affairs (DVA) initially granted a 20 percent disability rating for line of duty (LOD) injuries, it deferred a PTSD rating. In a Physical Health Assessment (PHA) performed on 15 Aug 17, the applicant reported he received care for mental health conditions/concerns in the past year, specifically for PTSD and anxiety. His medical records reflect consistent and prolonged treatment for PTSD, anxiety, and depression, both by civilian and military medical service providers.

On 30 Jul 20, the applicant's mental health provider drafted a memorandum outlining his mental health fitness. The memorandum indicated the applicant was made aware his unit medical provider entered a 179-day mobility and duty restricting profile into Aeromedical Services Information Management System on 16 Jul 20, which stated, "no deployment or mobility without clearance from Psychological Health Provider." The memorandum provided, that as of 27 Jul 20, he was cleared by his psychological health provider for mobility and deployment and at no point during his treatment was the applicant ever placed on a profile for his mental health condition.

On 29 Apr 21, the DVA determined the applicant had a service-connected disability for PTSD and granted a 50 percent disability rating, effective 1 Oct 30, the day following the applicant's discharge from active duty service. The rating was based on a Rating Decision, dated 20 Mar 20, granting service-connection, and a Rating Decision, dated 13 Apr 20, deferring diagnosis based on his return to active duty. The DVA concluded the overall evidentiary record showed the severity of his disability most closely approximated the criteria for a 50 percent disability evaluation, in accordance with Title 38, Code of Federal Regulations, Section 4.7 (38 CFR § 4.7) and 38 CFR § 4.126. It declined a higher evaluation of 70 percent as not warranted for a mental disorder unless the evidence showed occupational and social impairment.

On 22 Aug 21, the applicant submitted an IG complaint for alleged violations of [State] General Laws. In this complaint, he alleged sending a Promotion Propriety Action letter on 5 Jan 21 regarding directives he was following to ensure childcare background checks for the Chapel staff. A staff member requested an exemption from the background check three times and also shared sensitive information, making the applicant legally obligated to inform law enforcement. Wing leadership transferred the staff member without the applicant's consent, a move that eliminated the need for the individual's background check. The applicant contested this action, comparing it to the Catholic Church's actions in Boston during the sex abuse scandal. Between 5 Jan 21 and 19 Jan 21, his leadership reportedly urged the applicant to omit the background check details from his letter to increase chances of a promotion recommendation from the Adjutant General (TAG). Although he complied on 19 Jan 21, the applicant did report this to his state IG. Despite initially receiving a recommendation, the promotion was later revoked after the applicant reintroduced the omitted details in a subsequent communication. His IG complaint discusses in detail his rescinded promotion was retaliatory based on his protected whistleblower communications.

Further, on 2 Dec 21, another IG complaint was lodged against the applicant's wing and its commander, accusing them of neglecting the mandates of DoDI 6040.46 regarding medical care. He alleged in Aug 20 he was informed he was assigned a medical profile for an unspecified anxiety condition, an action believed to be retaliation and restriction tied to a prior IG complaint. Despite the applicant's numerous requests for an SHPE, these requests went unanswered. He was declined medical clearance without a legitimate medical evaluation and against the recommendations of primary care doctors. This appears to be an attempt to avoid referral to the DES. On 30 Sep 21, it was communicated the applicant was not eligible for an SHPE, contradicting DoDI 6040.46, which mandates such an exam for reserve members with extended contingency orders, like the applicant's orders from 2 May 15 through 30 Sep 20. The applicant

believes this obstruction, including a missed meeting with the chief of aerospace medicine in Sep 20, is retaliatory in nature due to the existing IG complaint against both the wing commander and chief of aerospace medicine about the misuse of a medical profile.

Ultimately, the applicant requested and was granted a hardship separation and was honorably discharged on 3 Jan 22. Despite approval of his separation request, a significant administrative oversight was made in failing to refer the applicant to the MEB or otherwise properly evaluate his service-connected injuries prior to his separation. This omission came on the heels of his active duty service, during which time he sustained an LOD injury. The circumstances surrounding the applicant's injuries, particularly the apparent failure to undergo a comprehensive assessment or the opportunity for DES referral prior to his separation, stand at the core of his current petition. Each area of concern, when examined under the lens of established Air Force and DoD regulations, combined with the MWPA, reveal a series of injustices for which relief should be granted.

Per counsel, the applicant was wrongly denied an SHPE in accordance with DoDI 6040.46. Counsel quotes portions of this DoDI in support of his contention. Counsel further contended the applicant's military service history places him squarely within the requirements for an SHPE. Additionally, he was diagnosed with PTSD. Had his command directed the required SHPE, it is likely further medical evaluation would more likely than not have been necessary, to which he is therefore, entitled. Even if his command argued the applicant's PTSD did not preclude completion of his service, DoDI 6040.46 requires referral for documentation of medical profiles for administrative purposes. The trajectory of the applicant's military service, especially after an LOD injury, provides a case in point about the command's deviations from DoDI 6040.46. Critically, he was never referred to an MEB. This oversight deviated from the principles outlined in DoDI 6040.46. Moreover, in Aug 20, when the applicant explicitly highlighted his medical treatment history and various health issues, including PTSD, his pleas for an SHPE fell on deaf ears. The wing commander's assertion in Sep 21 that the applicant was not eligible for an SHPE is not just an oversight, it is a contradiction of the DoD's policy. Such behavior runs counter to the spirit of the regulation, which aims to protect and serve the service member, ensuring they receive due care and evaluation. The command's failure to ensure the applicant's SHPE represents a dereliction of duty, and the military owes it to the applicant to uphold the tenets of DoDI 6040.46.

The oversight of the applicant's command in referring him to an MEB presents a breach of critical military regulations as stated in Air Force and DoD regulations, with potential consequences on his military benefits and future. Counsel quotes excerpts from Air Force Instruction (AFI) 36-3212, *Physical Evaluation for Retention, Retirement and Separation*, in support. The applicant's PTSD symptoms, compounded with additional diagnoses, should have automatically triggered a referral to an MEB. His PHA in 2017, the initial 20 percent rating for LOD injuries by the DVA, and the memorandum from his mental health provider in 2020 all signaled the necessity for a comprehensive assessment as per AFI 36-3212. Furthermore, the DVA's determination of a service-connected disability for PTSD in Apr 21 should have been a clear precursor for immediate action on the part of the military. The backdrop of alleged retaliatory actions against the applicant, particularly his interactions with the wing commander and TAG, further complicates the scenario. The use of medical profiles, the hindrances to his promotion, and the obstruction to his rightful SHPE, as mandated by DoDI 6040.46, reflect a possible environment of hostility.

The applicant's request for a hardship separation, while granted, was tainted by the lack of due process regarding his medical conditions. An MEB referral might have resulted in different outcomes for him, possibly including medical retirement with associated benefits. His separation without this critical evaluation essentially denied him due process rights and the potential benefits that come with a proper evaluation of service-connected injuries.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an honorably discharged [State] Air National Guard captain (O-3).

On 28 May 17, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant was furnished an honorable discharge and credited with 7 months and 15 days net active service for this period. Member was on AD in support of Operation INHERENT RESOLVE in accordance with Title 10, United States Code, Section 12301(d) (10 USC § 12301(d)) 14 Oct 16 to 21 May 17.

On 15 Aug 17, according to an *Annual PHA Patient Response Report*, provided by the applicant, he reported receiving care for PTSD and anxiety within the past year.

On 30 Jul 20, according to a XX MDS/SGOW (Licensed Clinical Psychologist) memorandum, Subject: Mental Health Fitness for [applicant], on 27 Jul 20, he was assessed to be, "fit for duty from a MH perspective and considered appropriate for transition to AD USAF." Additionally, "At no time during his treatment with the undersigned was the applicant ever placed on a profile for his mental health condition."

On 29 Sep 20, according to an excerpt from the applicant's medical record, provided by the applicant, a telephone consult (T-CON) with the XXth Medical Group documented the applicant's request for an AF Form 422, *Notification of Air Force Member's Qualification Status*.

On 30 Sep 20, according to DD Form 214, the applicant was furnished an honorable discharge and credited with 1 year, 10 months, and 20 days net active service for this period. Member was on AD in support of Operation FREEDOM SENTINEL in accordance with 10 USC § 12301(d) (HOMESTATION) from 11 Nov 18 to 30 Sep 20.

On 29 Apr 21, according to DVA Decision Review Officer Decision, provided by the applicant, service-connection for PTSD was granted with an evaluation of 50 percent, effective, 1 Oct 20. Rating decision dated 20 Mar 20 granted service-connection. Rating decision dated 13 Apr 20 deferred based on return to active duty. This rating decision was done to finalize the 20 Mar 20 rating decision.

On 22 Sep 21, according to AF Form 102, *Inspector General Complaint Form*, provided by the applicant, he submitted a complaint against his wing commander and TAG alleging retaliation and restriction.

On 2 Dec 21, according to AF Form 102, provided by the applicant, he submitted a complaint against his wing commander alleging delayed action of a DoDI requirement for medical care.

3 Jan 22, according to NGB Form 22, *National Guard Report of Separation and Record of Service,* the applicant was furnished an honorable discharge, with Authority and Reason: AFI 36-3209, paragraph 2.46.1.1., Hardship/Request Transfer to ARPC – No MSO, SPD: MNB, and was credited with 7 years, 5 months, and 26 days net service this period.

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

APPLICABLE AUTHORITY/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 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 21 May 24 and 29 May 24, Board staff provided the applicant a copy of the liberal consideration guidance (Exhibits C and F, respectively).

AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds insufficient evidence and records to support the applicant's request for a military disability retirement or referral into the IDES/LDES for his mental health condition.

This advisory is limited to the applicant's mental health condition. The Board should receive or review an advisory from a medical advisor to address his physical condition, as deemed necessary. This psychological advisor has reviewed the available records and found no evidence to support the notion the applicant should have been referred to the MEB or DES for his mental health condition. There is clear evidence and records the applicant did receive treatment for anxiety, depression, and PTSD developed from his deployment-related duties and personal life stressors during his time with the ANG. It is noted he had a mental health condition of anxiety and received mental health treatment prior to this military service, but there are records suggesting his military duties/service had aggravated his prior-service condition of anxiety. He did receive consistent mental health treatment as contended but receiving mental health treatment or a mental disorder diagnosis does not automatically render a condition unfitting for a referral to the MEB. The applicant's treatment records reflected his symptoms tend to exacerbate in reaction to his situational stressors and would improve with the proper use of coping skills and medication compliance. Towards the end of his military career, while on duty status/orders from the period of 29 Aug 19 to 28 Sep 20 (almost a year), he met with a military mental health provider for quarterly follow-ups, as required by policy. These follow-up progress notes reflected his anxiety, depression, and PTSD symptoms, and overall functioning were improving over time, and in fact, he made such significant improvements he wanted to transfer to active duty service, which his mental health provider had supported. His symptoms, particularly depression, briefly recurred after he was informed he was going to be separated under Title 10 and worried about financially supporting his family. Once he was able to find a job and adjust to his situational stressors, his symptoms and functioning improved again. His mental health provider never placed the applicant on a Duty Limiting Condition profile for his mental health condition, he was consistently determined to be suitable and fit for continued military service, and he was never referred to the Deployment Availability Working Group (DAWG), Review in Lieu Of (RILO), or MEB for a possible medical discharge/retirement. His mental health provider did report in a memorandum, dated 30 Jul 20, the applicant was placed on a 179-day mobility and duty restriction profile for Unspecified Anxiety Disorder on 16 Jul 20 and he would have no deployment or mobility without clearance from his psychological health provider. His psychological health provider also known as his mental health provider (the provider who authored the memorandum) cleared him for deployment and mobility 11 days later on 27 Jul 20. The applicant was briefly and temporarily placed on a profile and there is no evidence or records he was placed on a permanent profile for his mental health condition. A temporary profile does not suggest he had an unfitting mental health condition, and a profile is typically placed to allow time to evaluate the service member and/or condition for fitness determination, safety monitoring, and stability. His military mental health provider last met with him two days before he was removed from orders. The applicant's mental health provider's assessment of his functioning and fitness for duty near or around the time of his order termination was appropriate and there is no error or injustice identified with the assessment. After he was released from orders for unspecified reasons, presumably on or around 30 Sep 20 based on his medical records and his DVA service-connection effective date, there are no records he was on active duty orders or participated in monthly and annual drills from 1 Oct 20 until his official separation from the ANG on 3 Jan 22. The applicant nor his legal counsel provided any information about his military activities during this time period of Oct 20 to Jan 22. The applicant continued to receive

mental health treatment from the DVA after he was released from orders in Sep 20, but there is no evidence or records his mental health condition had elevated to unfitting or his mental health condition had interfered with his ability to perform his military duties in accordance with his office, grade, rank, or rating. His last DVA treatment note dated 20 Sep 21, before his official discharge from the ANG, reported his depressive symptoms had mostly resolved but he still experiences PTSD symptoms which had lessened with medication indicating his PTSD symptoms were managed. There was discussion his medications were being tapered also signifying his symptoms were improving. From the available records, the applicant was determined to be fit for duty based on his mental health condition, and there was no evidence he had any unfitting mental health condition that would meet the criteria to be referred to the MEB and DES for a medical discharge/retirement. Moreover, there is no evidence or records he received a formal LOD determination for his mental health condition. Without an LOD determination, he would not receive a rating or a compensable medical discharge if he was processed through the MEB and DES and found unfit for his mental health condition.

The applicant's legal counsel contends he was unjustly denied an SHPE. There is no evidence to corroborate this claim. There was a T-CON note, dated 29 Sep 20, reporting an SHPE or separation physical examination was to be coordinated by the Medical Standards Management Element (MSME) and no additional information was provided. This would dispute his contention he was unjustly denied an SHPE. There are no records confirming he completed an SHPE or a similar evaluation within 12 months or near or around the time he was released from orders on 30 Sep 20 and/or his official separation date of 3 Jan 22 in his electronic medical record (EMR). He could have received an evaluation that was not transferred or included in his EMR. An SHPE is performed by a medical provider/Primary Care Manager and not a mental health provider. Hypothetically, if he did receive an SHPE, he would have received clearance from mental health based on the last evaluation with his military mental health provider on 28 Sep 20, the last time he was seen by any military provider, and from his last treatment records from the DVA on 20 Sep 21 reporting his symptoms were improving. The Board may consider receiving a medical advisory to address this issue of the absence of a SHPE.

For awareness, since the applicant has received service-connection for his mental health condition from the DVA: The military's DES, established to maintain a fit and vital fighting force, can by law, under 10 USC, only offer compensation for those service incurred diseases or injuries which specifically rendered a member unfit for continued active service and were the cause for career termination; and then only for the degree of impairment present at the time of separation and not based on post-service progression of disease or injury. To the contrary, the DVA, operating under a different set of laws, 38 USC, is empowered to offer compensation for any medical condition with an established nexus with military service, without regard to its impact upon a member's fitness to serve, the narrative reason for release from service, or the length of time transpired since the date of discharge. The DVA may also conduct periodic reevaluations for the purpose of adjusting the disability rating awards as the level of impairment from a given medical condition may vary [improve or worsen] over the lifetime of the veteran.

After an exhaustive review of the available records, this psychological advisor finds no error or injustice with the applicant's discharge from a mental health perspective. He did not have any unfitting mental health condition, including PTSD, meeting the criteria to be referred to the MEB and DES for early career termination and a medical discharge. This psychological advisor also opines liberal consideration is not appropriate to be applied to his request because fitness determination, medical discharge/retirement requests, LOD determinations, etc. are not covered under this policy. The applicant already received an honorable discharge, so this policy would not improve his current discharge characterization. Should the Board choose to apply liberal consideration to the applicant's request for a medical discharge/retirement despite this policy not being appropriate for this type of request, the following are answers to the four questions from

the Kurta Memorandum from the available records for review. It is reminded that liberal consideration does not mandate an upgrade per policy guidance.

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
The applicant's legal counsel contends he should have been referred to the MEB and DES for his mental health condition of PTSD. He began to exhibit PTSD symptoms primarily due to his exposure to a mission involving the death of a child between Oct 16 and May 17 when stationed with the XXX EOS.

2. Did the condition exist, or experience occur, during military service?
There is evidence and records to confirm the applicant was diagnosed and treated with PTSD during his military service incurred by his deployment-related duties. He was also diagnosed and treated for Anxiety Disorder Unspecified, Generalized Anxiety Disorder, Depressive Disorder Unspecified, Major Depressive Disorder, and Adjustment Disorder during service.

3. Does the condition or experience actually excuse or mitigate the discharge?
There is no evidence the applicant had any unfitting mental health condition, including PTSD, that would result in a referral to the MEB and DES for a medical discharge/retirement. He was consistently determined to be fit for duty and was not referred to the MEB, DES, DAWG, or RILO by his military mental health care provider. His symptoms were reported to have improved with treatment at or around the time he was removed from orders in Sep 20 and near or around the time of his official discharge in Jan 22. There is no error or injustice identified with his discharge from a mental health perspective. His mental health condition or experience does not excuse or mitigate his discharge.

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

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 21 May 24 for comment (Exhibit E), and the applicant replied on 27 Sep 24. In his response, counsel on behalf of the applicant, contended the advisory opinion asserts insufficient evidence has been presented to support the applicant's request; however, this finding is contrary to the evidence acknowledged in the advisory opinion which clearly documents numerous instances spanning several years where the applicant experienced suicidal ideations, nightmares, sleep disturbances, etc. In support of this contention, counsel provides excerpts from DoDI 1332.18, *Disability Evaluation System*, DoDI 6130.03, Volume 2, *Medical Standards for Military Service: Retention*, and AFI 48-133, *Duty Limiting Conditions*.

The advisory opinion avers that although the applicant was unequivocally suffering from an underlying mental health condition, had repeatedly experienced suicidal ideations, and other symptoms commonly associated with PTSD, his condition did not warrant the initiation of a psychiatric profile or referral to the DES. The medical records referenced throughout the advisory opinion clearly establish the applicant was suffering from a severe mental health condition which warranted the initiation of an S4 profile. The applicant's civilian medical provider stated he was the applicant's primary doctor for many years but last saw him in 2015. While under the civilian provider's care, the applicant was assessed for anxiety, stress, and mild depression which was mostly situational and related to work stressors re: his deployment orders. Due to these stressors, the provider used the phrase "possible PTSD component." The provider

gave information regarding prescriptions and closed his notes stating the applicant improved clinically and spontaneously with resolution of stressors. The applicant reported he never actually initiated the medications. The applicant was never officially diagnosed with PTSD, nor did the provider feel the applicant ever met the criteria for that diagnosis by the Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition.

Counsel reiterated medical notes from the applicant's record stating on 16 Sep 15 the provider believed the applicant's condition may impact his ability to fare in a hostile environment. During a Mar 17 Post-Deployment Health Assessment, the applicant endorsed having nightmares, avoidance behaviors, hypervigilance, and feeling numb and detached from others. He reported these same symptoms on his Aug 17 PHA. Counsel further stated the applicant spoke to a nurse at the Naval Health Clinic in Mar 19 to request a referral for outpatient mental health treatment for PTSD and depression. The applicant was seen the next day and indicated he was seen by his base psychologist and recommended for a partial hospitalization program. On 29 Mar 19, the applicant received a mental health evaluation and endorsed intrusion symptoms, avoidance, negative cognitions, hyperarousal, difficulty concentrating, angry outbursts, depression, decreased interest in pleasurable activities, unintentional weight gain, and anxiety/nervousness, and was determined to be at a chronically elevated risk above population baseline risk of harm to self and others. In Dec 19, the applicant met with his Primary Care Manager for medication management and reported he was struggling more with depression and was feeling hopeless and having thoughts of self-harm.

Counsel also provided in support, a memorandum from the Director of Psychological Health (DPH) for the XXX Intelligence Wing, a licensed clinical social worker, indicating the applicant's condition was deteriorating and interfering with his duty performance. In the memorandum, the DPH indicated she conducted an initial assessment with the applicant on 21 Nov 17, provided support and counseling and referred him to intensive treatment. The DPH met with the applicant again on 27 Jul 20 when he was experiencing panic attacks and tremors while at the base, and again on 18 Aug 20 due to tremors during duty hours. In her summary, the DPH stated to the extent which his condition interfered with his military duties, including his ability to operate in an austere and hostile environment, the applicant was not stable, and the lack of overall improvement interfered with military duties. In light of the DPH assessment of the applicant during the 2019 and 2020 time period, the assertion of the advisory opinion that the applicant was fit for duty from a mental health perspective in Jul 20 is egregiously incorrect. Further, a review of the applicant's DD Form 2807-1, *Report of Medical History*, dated 3 Aug 20, clearly indicated his condition was not improving and was interfering with his duty performance. On his DD Form 2807-1, the applicant indicated he had issues regarding being seen by medical providers for his underlying mental health condition. Also in support, the applicant's spouse provided a letter detailing his behavior during the period 2018-2020.

Additionally, the advisory opinion's assertion there is no evidence to corroborate the claim the applicant was denied an SHPE is without merit. Under the presumption of regularity, it must be presumed the SHPE was conducted and would have been uploaded to his EMR pursuant to regulations and standard operating procedures. The fact that the most basic task of saving a document to the applicant's EMR was not completed only serves as proof that no SHPE was completed.

The severity of the applicant's symptoms and the ongoing and continuous nature of those symptoms clearly interfered with his ability to perform the duties of his office, rank, grade, or rating. His condition was exacerbated by working in a military environment. The applicant suffered from suicidal ideations, panic attacks, tremors, memory loss, consistent depression, and occupational and social impairment prior to his separation from service. It is without question he should have been placed on an S3 or S4 profile and referred to the Airmen Medical Readiness

Optimization/DAWG for an initial RILO and then referred to the IDES for evaluation for a disability retirement.

Finally, the applicant was suffering from significant mental health symptoms associated with his PTSD. The evidence provided in his initial application and the supplemental evidence is more than sufficient to establish a violation of regulations insofar as the Air Force failed to refer the applicant for evaluation for a medical disability retirement. When each piece of evidence is reviewed, it is clear that had the proper procedures been followed, the applicant would have been medically retired from service.

The applicant's complete response is at Exhibit G.

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, to include the applicant's rebuttal, 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. Under the Vazirani memorandum guidance, a bifurcated review was conducted, and liberal consideration was applied by the Board regarding the applicant's discharge finding his mental health condition did not excuse or mitigate his discharge. Regarding the applicant's fitness determination, while there is evidence the applicant was diagnosed and treated for PTSD during military service, his service treatment records reflect he was consistently found fit for duty; therefore, there was no cause to refer the applicant to the IDES, and no support for a medical retirement, from a mental health perspective. There is no evidence of an extended/permanent profile based on his mental health condition, and no finding his mental health condition was determined to be LOD, a requirement for referral to the IDES for disability retirement in accordance with DoDI 1332.18. Additionally, the completed LOD determination found in the records, provided by the applicant, was for a wrist injury. There was no subsequent documentation provided which suggested the wrist injury was unfitting and prevented the applicant from performing the duties of his office, grade, rank, or rating as a Chaplain.

Further, there is no evidence the applicant was denied an SHPE. To the contrary, the T-CON encounter notes, dated 29 Sep 20, one day prior to termination of his active duty orders, reflect the applicant's attempts to gain medical clearance via an AF Form 422, and the recommendation he contact his MSME at the ANG, as well as the provider's comment regarding the XXX Medical Group reaching out to the ANG MSME to inform them. Finally, the Board also determined there was insufficient evidence presented to conclude the applicant was the victim of reprisal in violation of 10 USC § 1034. 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 DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2023-03608 in Executive Session on 22 Aug 24 and 16 Oct 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 2 Nov 23.
Exhibit B: Documentary Evidence, including relevant excerpts from official records.
Exhibit C: Letter, SAF/MRBC, w/atchs (Liberal Consideration Guidance), dated 21 May 24.
Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 9 May 24.
Exhibit E: Notification of Advisory, SAF/MRBC to Counsel, dated 21 May 24.
Exhibit F: Letter, SAF/MRBC, w/atchs (Liberal Consideration Supplemental Guidance), dated 29 May 24.
Exhibit G: Counsel's Response, atchs, 27 Sep 24

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

X

Board Operations Manager, AFBCMR