RECORD OF PROCEEDINGS

IN THE MATTER OF: XXXXXXXXXXXXXX

DOCKET NUMBER: BC-2024-00926

COUNSEL: XXXXXXXXXXX

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His official military personnel records be amended to:

a. Change his disability rating for Crohn's disease from 10 percent to 30 percent.
b. Determine at the time of the applicant's Physical Evaluation Board (PEB), his Post-Traumatic Stress Disorder (PTSD) caused significant duty limitations with symptoms that approximated a disability rating of 70 percent.
c. Change his discharge from Discharge With Severance Pay (DWSP) to medical disability retirement.
d. Award retroactive military retirement pay to date of discharge.

APPLICANT'S CONTENTIONS

Per counsel, the applicant served in the [State] Air National Guard with various periods of active duty from 17 Dec 06 – 12 Oct 10. In Dec 07, the applicant was diagnosed with Crohn's disease. At the time of the diagnosis, the applicant was on Title 10 orders since 19 May 07. The applicant also began experiencing PTSD and Major Depressive Disorder (MDD) symptoms while on active duty after being involved in an unmanned aerial vehicle (UAV) strike operation. A line of duty (LOD) determination was issued on 1 Apr 10. Due to the impact of these conditions, the applicant was referred to a Medical Evaluation Board (MEB) and then an informal Physical Evaluation Board (IPEB). The applicant disagreed with the findings of the IPEB. The formal PEB (FPEB) recommended he be discharged with severance pay with a [disability] rating of 10 percent. The Department of Veterans Affairs (DVA) service-connected the applicant for Crohn's colitis at 30 percent and PTSD at 30 percent, both with an effective date of 13 Oct 10.

Once a service branch determines a member is unfit for continued military service, it is required by Title 10, United States Code § 1216a (10 USC § 1216a) to assign a disability rating using the Veterans Affairs Schedule for Rating Disabilities (VASRD). The PEB did not assign the proper rating for the applicant's Crohn's colitis. Further, the PEB incorrectly found the applicant's PTSD did not have to be rated due to a lack of duty restrictions. The applicant's PTSD symptoms at the time closely resembled that of a 70 percent rating under the VASRD, with severe occupational impairment. Because of these errors, the applicant received a medical separation instead of a medical retirement, causing him a great injustice and the loss of many years of benefits as a military retiree.

The PEB found the applicant's Crohn's disease to be best rated at 10 percent. The VASRD does not provide a unique diagnostic code for Crohn's disease thus, current ratings for Crohn's disease have been assigned by analogy to diagnostic code 7323 for ulcerative colitis. Notably, Crohn's disease is both more severe, and a rarer form of inflammatory bowel disease than

ulcerative colitis. In the applicant's case, the preponderance of the evidence most closely approximates a 30 percent rating under diagnostic code 7323. In support, counsel provides a detailed summary of the applicant's symptoms.

Per counsel, supporting documentation reports the applicant's Crohn's limits his duty day and his absence rate is excessive. His condition requires continuous monitoring and is unrelieved by therapies. The applicant stated he lost over fifty pounds due to his condition, the symptoms have affected him mentally and physically, he became unable to enjoy physical activities he used to enjoy, and he had to delay graduate school.

The PEB's only argument as to why the applicant's condition does not qualify as moderately severe is the medical record does not provide evidence the applicant's condition had worsened, and he required hospitalization for management. However, there is no requirement that the applicant had to show his condition worsened; he had to show his condition met the requirements of a rating in excess of 10 percent under diagnostic code 7323. Further, diagnostic code 7323 does not require the applicant to show his condition requires hospitalization for management. The PEB is not permitted to use requirements outside of the VASRD when evaluating a degree of disability.

Additionally, the PEB erred in finding the applicant's PTSD should not be rated as the record does not reflect any evidence of duty or mobility restrictions. This finding is without merit and not supported by the evidence in the record at the time of the PEB. The applicant's PTSD caused severe duty impairments, and his symptoms at the time of the PEB most approximated that of a 70 percent rating under diagnostic code 9400. Counsel provided excerpts from medical documentation to support this position. Further, counsel provided an excerpt from the criteria listed under the DVA's diagnostic code for PTSD.

In *Mauerhan v. Principi,* the Court made clear that "the factors listed in the rating formula [found in 38 C.F.R. § 4.130] are 'examples' of conditions that warrant particular ratings." 16 Vet. App. 436, 442 (2002). When promulgating these criteria, "it is not the symptoms, but their effects that determine the level of impairment." *Thun v. Peake*, 22 Vet. App. 111, 118 (2008). It is the language in the diagnostic code of the rating schedule before the phrase "such symptoms as" that is the key. A veteran need only show that whatever his symptoms are, they "cause occupational or social impairment equivalent to what would be caused by the symptoms listed …." *Mauerhan,* 16 Vet. App. at 443.

Counsel further contends the evidence demonstrated the applicant met the criteria for a 70 percent rating under diagnostic code 9400 for work impairment, thought impairment, near-continuous depression, difficulty adapting to stressful circumstances, and suicidal ideation, and had severe occupational and social impairment due to his PTSD, meeting at least five of the 70 percent criteria under this diagnostic code. Thus, the PEB should have found the applicant's PTSD caused duty restrictions and also that he met the criteria for 70 percent.

Finally, as discussed, the PEB erred by 1) assigning the incorrect rating for the applicant's Crohn's disease; and 2) by finding the applicant's PTSD caused no duty restrictions. Had these errors not occurred, the applicant would have been assigned a 30 percent rating for this Crohn's disease and a 70 percent rating for his PTSD, combined to total 80 percent under the DVA's combined rating formula. Members who have a disability that is at least 30 percent under the VASRD used by the DVA at the time of determination shall be retired. Therefore, the applicant must be retroactively medically retired and the reason for discharge changed from medical severance to medical disability retirement.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an honorably discharged [State] Air National Guard staff sergeant (E-5).

On 18 Nov 08, according to AF Form 422, *Physical Profile Serial Report*, the applicant was placed on a temporary profile pending MEB.

On 8 Jun 09, according to AF IMT 348, *Line of Duty Determination*, the applicant's diagnosis of Crohn's disease was found to be in the line of duty (ILOD).

On 2 Aug 09, according to a XXX IS/CC memorandum, Subject: Medical Evaluation Board (MEB) Identification of [applicant], the applicant's commander recommended he be found unfit for military service.

On 11 Aug 09, the XXX MDG submitted a Narrative Summary for MEB regarding the applicant's Crohn's colitis.

On 18 Aug 09, according to AF IMT 618, *Medical Board Report*, the applicant was diagnosed with Crohn's colitis and referred to the IPEB.

On 5 Feb 10, 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:
    - Crohn's Disease/Colitis; Incurred while entitled to receive basic pay: Yes; Line of Duty: Yes; Disability Rating: 30 percent; Veterans Affairs Scheduled for Rating Disabilities (VASRD) Code: 7399-7323.

The IPEB recommended temporary retirement with a compensable percentage of 30 percent.

On 20 Feb 10, according to AF Form 1180, *Action on Informal Physical Evaluation Board Findings and Recommended Disposition*, the applicant did not agree with the findings and recommended disposition of the IPEB and requested a formal hearing of the case.

On 1 Apr 10, according to a XXX MDG/SGP memorandum, the applicant experienced the acute onset of a major depression and PTSD approximately two and a half years prior, and he was under ongoing treatment with a psychiatrist for unrelenting depression and recurring PTSD.

On 2 Apr 10, according to AF IMT 348, the applicant's diagnosis of PTSD and MDD, Recurrent Episode Unspecified Degree, was found to be ILOD.

On 4 Apr 10, according to a XXX IS/CC memorandum, Subject: Medical Evaluation Board (MEB) Identification of [applicant], the applicant's commander opined the applicant's once stellar performance drastically decreased, due to PTSD and MDD, and the commander does not feel the applicant can continue to serve.

On 14 Apr 10, according to AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board (Formal)*, the applicant was found unfit because of physical disability and diagnosed with:

- Category I – Unfitting Conditions Which Are Compensable And Ratable:
    - Crohn's Disease/Colitis; Incurred while entitled to receive basic pay: Yes; Line of Duty: Yes; Disability Rating: 10 percent; VASRD Code: 7399-7323.

The FPEB recommended DWSP with a compensable percentage of 10 percent.

On 15 Apr 10, according to AF Form 1180, *Action on Formal Physical Evaluation Board Findings and Recommended Disposition*, the applicant disagreed with the findings and recommended disposition of the FPEB and requested his case be referred to the SAFPC [Secretary of the Air Force Personnel Council] for review and final decision.

On 23 Apr 10, applicant's counsel submitted a rebuttal to the FPEB to SAFPC for consideration.

On 29 Apr 11, according to a SAF/MRBP memorandum, Subject: Physical Evaluation – [applicant], the Secretary of the Air Force directed the applicant be discharged and receive severance pay with a disability rating of 10 percent under the provisions of 10 USC § 1203. The disability rating was determined based on the VASRD in use by the DVA in accordance with the National Defense Authorization Act of 2008.

On 24 Jun 11, according to NGB 22, *Report of Separation and Record of Service*, the applicant was furnished an honorable discharge, with Authority and Reason: AFI 36-3212, Chapter 8: Discharge Disability, Severance Pay, Non-Combat, SPD [Separation Program Designator]: JFO [Discharge Disability, Severance Pay, Non-Combat], and was credited with nine years, two months, and seven days total service for pay.

On 22 Aug 11, according to DVA Rating Decision, provided by the applicant, service-connection was awarded for Crohn's colitis with an evaluation of 30 percent, effective 13 Oct 10 and PTSD with depression and anxiety with an evaluation of 30 percent, effective 13 Oct 10.

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

APPLICABLE AUTHORITY

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 [traumatic brain injury] 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 15 Oct 24, Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

AIR FORCE EVALUATION

AFPC/DPFDF recommends partially granting the application. The case file records and documents provided in the application reflect differences in adjudication among the various bodies. Given the totality of information, there is evidence that supports a rating of moderately severe and thus, a disability rating of 30 percent for the applicant's Crohn's disease/colitis.

The Air Force and the DVA disability systems operate under separate laws. Under the Air Force system (10 USC), the PEB must determine whether an airman's medical condition renders them unfit for continued military service relating to their office, grade, rank, or rating. To be unfitting, the condition must be such that it alone precludes the member from fulfilling their military duties. The PEB then applies the rating best associated with the level of disability at the time of disability processing. That rating determines the final disposition (discharge with severance pay, placement on the temporary disability retired list, or permanent retirement) and is not subject to change after the service member has separated. Under the DVA system (38 USC), the member may be evaluated over the years and their rating may be increased or decreased based on changes in the member's medical condition at the current time. However, a higher rating by the DVA based on new and/or current exams conducted after discharge from service does not warrant a change in the total compensable rating awarded at the time of the member's separation.

The applicant's case was submitted to the PEB for the potentially unfitting condition of Crohn's Disease/Colitis. While there were indications of treatment for PTSD beginning 17 Nov 09, there is no mention his PTSD was unfitting. In the applicant's letter to the PEB, dated 1 Sep 09, he discusses his Crohn's disease, but makes no mention of PTSD. An IPEB decision, on 5 Feb 10, confirmed the unfitting determination of Crohn's Disease/Colitis and recommended placement on the Temporary Disability Retired List with a disability rating of 30 percent. The applicant appealed this decision to the FPEB, requesting addition of PTSD as an unfitting condition and combat-related designation (with disability rating at 50 percent) and maintaining the unfit determination from the IPEB for Crohn's Disease/Colitis with a disability rating of 30 percent. Based on available information in the record and testimony, the FPEB determined the applicant's Crohn's Disease/Colitis condition more closely aligned with a disability rating of 10 percent, citing no medication changes, hospitalizations, emergency room or urgent care visits, as well as a lack of formal duty limiting profile or restrictions. Additionally, the FPEB determined the applicant's PTSD was not unfitting, citing a lack of formal duty limiting profile or restrictions. The applicant cited duty absences due to lack of sleep as evidence his PTSD was unfitting. The FPEB did not find evidence the applicant's lack of sleep and frequent work absences where attributed to PTSD.

The applicant appealed the FPEB's decision on both the disability rating of the Crohn's disease and the unfitting determination for PTSD to SAFPC. SAFPC upheld the FPEB's decision on both accounts, citing lack of evidence to support both claims.

In the case of the Crohn's Disease/Colitis, the IPEB and DVA found the evidence to support a disability rating of 30 percent, while the FPEB and SAFPC found evidence more closely approximating a 10 percent disability rating. As the applicant's legal counsel outlines in this application, the difference between the moderately severe of 30 percent and moderate of 10 percent in the guidance for rating disabilities is not well defined. The FPEB also cited the lack of duty limiting profiles. In contrast, the applicant's commander indicated the applicant's absences for bathroom breaks and duty absences were excessive and resulted in other airmen from a small section needing to cover his position.

The applicant also requested correction of his record to reflect his medical condition of PTSD be found unfitting by the PEB. Here, the IPEB, FPEB, and SAFPC were consistent in the determination. The medical records reflecting treatment of PTSD confirm a diagnosis. However, there is little objective evidence to demonstrate that PTSD prohibited the applicant from performing his duties. In the FPEB hearing, the applicant testified he frequently missed work due to lack of sleep. The FPEB (and SAFPC on appeal) did not find evidence where lack of sleep, and associated work absences, were attributed to his PTSD. Therefore, recommend the Board deny the applicant's request that his PTSD be found unfitting.

The complete advisory opinion is at Exhibit D.

The AFRBA Psychological Advisor finds no error or injustice identified with the applicant's discharge and MEB/PEB processing from a mental health perspective. His request for the desired changes to his records based on his mental health condition is not supported.

This advisory is limited to the applicant's mental health condition. The Board is recommended to obtain/review an advisory from a medical advisor or another subject matter expert to address his request and contentions pertaining to his physical condition. This Psychological Advisor has reviewed the available records and concurs with the FPEB's and SAFPC's decisions that the applicant did not have any unfitting mental health conditions, including PTSD, that would result in a medical discharge or retirement. According to the available records, the applicant did not meet with a mental health provider until 14 Sep 09, which was about a month after he was entered into the MEB and referred to the IPEB for his physical condition of Crohn's Disease/Colitis. It was during the applicant's initial outpatient intake evaluation when it was revealed he experienced an unidentified traumatic military incident (later revealed to be a UAV-related strike operation) causing him to experience ongoing significant distress and struggling with adjusting to his chronic illness. This incident occurred about one and a half years prior, which appeared to have coincided with the time the applicant was diagnosed with Crohn's Disease. He endorsed having PTSD/trauma symptoms of intense fear, helplessness, and horror, chest pains, shortness of breath, and tension, distressing dreams, persistent avoidance of stimuli associated with his traumatic event, diminished interest or participation in activities, feelings of detachment, distance, or estrangement from others, and difficulties with sleep. The applicant reported being terrified to cover for others' work on mission and avoided work by calling in sick. He was diagnosed with PTSD and Adjustment Disorder with Depressed Mood and was referred to mental health treatment. A letter from his mental health provider confirmed he began mental health treatment, specifically medication management treatment, for PTSD and MDD on 17 Nov 09. The psychiatrist opined the applicant's ability to continue to serve in the armed forces was unrealistic at the time due to the severity of his symptoms. This opinion was concurred with by the Deputy Chief of Aerospace Medicine in a memorandum for the MEB, dated 1 Apr 10, and by his commander in a report written to the MEB on 4 Apr 10. Although these statements suggested the applicant's mental health condition was potentially unfit for continued military service, their statements are not sufficient to demonstrate his mental health condition was unfit. The available record showed the applicant had only been in treatment for about four months when he testified before the FPEB. During his four months of medication management treatment with his psychiatrist, the applicant had been on several serious psychotropic

medications which included Lunesta, Prozac, Valium, Zyprexa, Wellbutrin, Klonopin, Xanax, Seroquel, and Lexapro. Some of these medications may produce immediate results and some may take weeks or months to feel its effects and to stabilize the intended treated symptoms. The psychiatrist only submitted a one-page letter succinctly discussing his treatment, progress, and prognosis, but his full treatment notes were not submitted for review. There was no information provided in the letter about how long the applicant had been on each medication, his side effects or reactions to these medications, reasons for medication changes, his treatment compliance and attendance, and clear reasons for his lack of improvement despite receiving evidenced-based combined treatment of pharmacotherapy from a psychiatrist and Cognitive Behavior Therapy (CBT)/psychotherapy from a therapist. Furthermore, treatment records from the applicant's therapist during this same time period were not available or submitted for review. It appeared the applicant was still in progress with treatment, and it was too premature to determine he had definitively failed, was not amenable, or did not benefit from treatment. The applicant's psychiatrist stated he would need long-term treatment for PTSD and MDD, indicating these conditions were chronic, and there were no records the applicant continued to receive the recommended long-term treatment for these alleged chronic conditions after his FPEB appeal had concluded. His compensation and pension (C&P) examination report from the DVA completed the following year, on 14 Apr 11, confirmed the applicant saw a psychiatrist for four months but stopped because he found the contact unhelpful. This may indicate the applicant terminated treatment against medical advice. Again, it does not appear he had been in treatment long enough to determine his condition had elevated to unfitting. The applicant's mental health condition did not appear to be chronic but rather acute based on the severity and frequency of his symptoms and the timeline for treatment. If his condition was chronic, he would need continued and long-term treatment, as recommended, and his symptoms would persist and recur over time causing significant impairments to his functioning continuing after his discharge. There is no evidence or records of any of these events.

The submitted C&P examination mentioned the applicant had previously participated in mental health treatment before his last iteration of treatment with the psychiatrist and CBT psychotherapy treatment with an unidentified therapist. The C&P examination stated, "The veteran was prescribed various psychiatric medications both in the Air Force and subsequent to his discharge. He was aware of most recently taking valium, (sic) Prozac, and Zyprexa. He discontinued about four years ago because he found they were generally unhelpful in helping with his depression or his anxiety. He was seen at the Work-P... VA by first a psychologist and then by a psychiatrist. He participated in outpatient treatment at the Work-P... VA for about six months two years ago, but discontinued because he found it made it worse." There are no records to confirm the applicant had received and discontinued mental health treatment at the Work-P... DVA two years prior or that he received treatment after his discharge. The C&P examiner cited the applicant's self-report of his treatment history and did not substantiate his reports with any actual records.

The available objective records at the time of the applicant's service showed he began to receive mental health treatment after he learned he was entering the MEB/Disability Evaluation System (DES) for his physical condition of Crohn's disease. Before his entrance into the MEB/DES, his medical provider and commander had discussed the effects and impairments of this physical condition on his military duties. The applicant also submitted a letter to the PEB discussing his physical condition and its effects. There were no reports of any mental health conditions by any of these individuals, including the applicant, nor was his mental health condition considered by the IPEB. Hypothetically, if the applicant was not referred to the MEB/DES for Crohn's disease, it is not certain if he would have received a mental health evaluation and treatment. There was no evidence or records the applicant had any mental health conditions or issues and certainly no evidence his mental health condition had impaired his functioning in the realms of his personal, social, and occupational activities before he entered the MEB/DES. The statements from his medical provider, commander, and himself identified it was his physical condition (not mental

health condition) that caused his duty limitations and restrictions. A memorandum from the Deputy Chief of Aerospace Medicine dated 1 Apr 10 reported the applicant had been treated for his mental health conditions of PTSD and MDD for two and a half years with medications and these chronic and debilitating conditions impaired his ability to perform his military duties. There is no evidence or records to support the Deputy Chief's opinion. There are no records confirming the applicant received mental health treatment for two and a half years and this report was inconsistent with the DVA's C&P examination reporting the applicant was in treatment for six months, two years ago at the Work-P... DVA and for four months with a psychiatrist. The applicant's total mental health treatment was less than one year per the C&P examination. The available treatment records reflected the applicant only received mental health treatment for four months. The Deputy Chief also reported the applicant was treated with medication with a psychiatrist and made no mention of any psychotherapy or CBT treatment with a therapist, whereas his C&P exam, psychiatrist's letter, and commander's second report reported he had received therapy. This is another inconsistent report that would suggest either the Deputy Chief did not thoroughly review his treatment records, or the applicant was not consistent with his reporting. It was also observed from his available records that the applicant was never evaluated by a duly qualified/credentialed mental health provider within the military. His psychiatrist was a civilian community provider and may not be well versed on the criteria to determine fitness for duty for a service member. The Deputy Chief was a uniformed medical provider, but this individual was not a military mental health provider who would have specialized knowledge of mental health or psychiatric conditions and the criteria to determine fitness for duty based on a mental health condition. It is not certain why the applicant was not evaluated by a military mental health provider, or if he was evaluated by a military mental health provider, this record was not submitted for review.

Receiving mental health treatment or a mental disorder diagnosis does not automatically render a condition unfitting. There are no records the applicant was placed on a permanent duty limiting condition (DLC) profile due to his mental health condition. The Deputy Chief reported the applicant was on a current profile for mobility restrictions but did not specify whether it was for his mental health condition or physical condition. There is evidence the applicant was on a DLC profile for his physical condition at the time the Deputy Chief completed the memorandum for the MEB. When a service member is initially placed on a DLC profile for a condition, the profile would typically be temporary for 30 to 90 days, especially when the service member is treated with psychotropic medications. The purpose of a temporary DLC profile is to allow time for treatment to progress in order to determine its effectiveness with minimal disruption, exacerbation, or aggravation from military duties or other factors and/or to monitor the stabilization of the condition. When the temporary DLC profile approaches the date of expiration, the provider would determine if the service member needed to be extended on a temporary DLC, update the profile to permanent, or remove the profile. The permanent profile would be an indication the condition was potentially unfitting meeting one of the criteria to be referred to the MEB/PEB/DES to determine unfitness. There is no evidence the applicant was placed on a permanent profile for his mental health condition signifying he had duty limitations and restrictions due to his mental health condition. The FPEB and SAFPC determined his mental health condition was not unfitting. Specifically, the FPEB found no evidence the applicant's duty limitations or restrictions were due to his mental health condition but that his excessive absences and calling in ill were caused by flare-ups of his Crohn's disease, per his commander's first report. The FPEB's decision regarding the applicant's fitness for duty for his mental health condition is crucial because the applicant had testified in front of the FPEB and answered their questions about his mental health condition. The FPEB did not find his records and testimony sufficient to determine his mental health condition was unfitting.

This Psychological Advisor finds no error or injustice with the FPEB's and SAFPC's decisions to find his mental health condition not unfitting for continued military service. The majority of the records that were submitted by the applicant and his legal counsel had already been reviewed

and considered by these respective boards. The records that were not reviewed by these boards were his C&P examination and Decision Rating letter from the DVA as they were not available or not completed until after the applicant was discharged from service. These records do not support that his mental health conditions were unfitting but were to establish service connection for DVA benefits. For awareness since the applicant had received service-connection 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. The DVA Rating Decision letter stated the applicant was granted service-connection because he was diagnosed with PTSD with secondary anxiety and depression during service and as this Psychological Advisor had mentioned previously, receiving a mental disorder diagnosis does not automatically render a condition unfitting. The applicant's legal counsel is requesting his condition of PTSD be rated at 70 percent despite this condition not being unfitting because this rating most closely resembles his symptoms and functioning at the time of the PEB. The DVA granted him a 30 percent rating for PTSD due to the severity and impairment of his PTSD symptoms, which was around the time of his PEB. There is no evidence the applicant's PTSD symptoms met the criteria of 70 percent, especially with the DVA granting him 30 percent around this time. Regardless of this anomaly, the applicant did not have any unfitting mental health conditions that would provide him with a disability rating or compensable medical discharge for his mental health condition.

Finally, liberal consideration is not applied to the applicant's request for a medical disability/retirement because the updated clarifying guidance, the Vazirani Memorandum, published on 4 Apr 24, clearly states that liberal consideration does not apply to fitness determinations, which include medical discharge, disability, and retirement requests. Therefore, liberal consideration is not applied to his petition. The updated clarifying guidance also instructed a bifurcated review should be performed when a mental health condition such as PTSD or TBI potentially contributed to the circumstances of discharge or dismissal to determine whether an upgrade to the discharge or change to the narrative reason is appropriate. Since the applicant already received an honorable character of service, a bifurcated review is not necessary or required.

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 15 Oct 24 for comment (Exhibit F) but has received no response.

FINDINGS AND CONCLUSION

1. The application was not timely filed, but it is in the interest of justice to excuse the delay.

2. The applicant exhausted all available non-judicial relief before applying to the Board.

3. After reviewing all Exhibits, the Board concludes the applicant is the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DPFDF and the rationale of the AFRBA Psychological Advisor and finds a preponderance of the evidence substantiates the applicant's contentions in part. Specifically, the applicant has provided a copy of his DVA rating decision, dated 22 Aug 11, which awarded service-connection for his Crohn's Disease/Colitis with an evaluation of 30 percent, effective 13 Oct 10, which is consistent with the findings of the IPEB, and is sufficient to justify granting the applicant's request to increase his disability rating from the FPEB from 10 percent to 30 percent, awarding a medical retirement.

However, for the remainder of the applicant's request, the evidence presented did not demonstrate an error or injustice, and the Board finds no basis to recommend granting that portion of the applicant's request. Regarding the applicant request for a finding of unfitness for PTSD with a disability evaluation of 70 percent, the Board finds there is no evidence the applicant's mental health condition caused duty restriction/limitations. The applicant was not assigned a DLC profile for PTSD, and reports referencing his treatment of his mental health condition are inconsistent. Finally, the applicant was not evaluated by a military mental health provider, or if he was, no record was submitted for this Board's review. Liberal consideration was not applied in accordance with the Vazirani memorandum. Therefore, the Board recommends correcting the applicant's records as indicated below.

RECOMMENDATION

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

a. On 14 Apr 10, he was found unfit to perform the duties of his office, rank, grade, or rating by reason of physical disability, incurred while he was entitled to receive basic pay; the diagnosis in his case was Crohn's Disease/Colitis, that his condition was under VASRD code 7399-7323; with a disability rating of 30 percent; the degree of impairment was permanent; the disability was not due to intentional misconduct or willful neglect; the disability was not incurred during a period of unauthorized absence; and the disability was not as a direct result of armed conflict or caused by an instrumentality of war and was not combat-related.

b. On 26 Jun 11, he was discharged from the [State] Air National Guard due to physical disability, and on 27 Jun 11, he was permanently retired with a compensable percentage for physical disability of 30 percent.

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

However, regarding the remainder of the applicant's request, the Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the application will only be reconsidered upon receipt of relevant evidence not already considered by the Board.

CERTIFICATION

The following quorum of the Board, as defined in 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-2024-00926 in Executive Session on 18 Dec 24:

, Panel Chair
, Panel Member

, Panel Member

All members voted to correct the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 12 Mar 24.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Letter, SAF/MRBC, w/atchs (Liberal Consideration Guidance), dated 15 Oct 24.
Exhibit D: Advisory opinion, AFPC/DPFDF dated 7 May 24.
Exhibit E: Advisory opinion, AFRBA Psychological Advisor, dated 1 Oct 24.
Exhibit F: Notification of advisory, SAF/MRBC to Counsel, dated 15 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