



UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01190

COUNSEL:

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. A Physical Evaluation Board/Medical Evaluation Board (PEB/MEB) be convened and he be given a medical retirement.
2. In the alternative, he be given a 20-year Reserve retirement.

APPLICANT'S CONTENTIONS

Due to his injuries at the time of discharge and his inability to continue his service in the Air Force, his chain of command erred in not separating him with a medical retirement. To be eligible for a military medical retirement, he must demonstrate his injuries were caused or exacerbated by military service, his injuries were not the result of his misconduct, and his injuries rendered him unfit for continued service at the time of his discharge. There were clear signs of physical and mental injuries the Air Force was aware of, and he has been diagnosed with Post-Traumatic Stress Disorder (PTSD), left and right shoulder rotator cuff tendonitis, left and right knee sprains, and tinnitus by the DVA. Specifically, the physical ailments were caused by the constant physical work behind active-duty service and the mental ailments caused by the effects of the trauma he suffered from responding to the Green Ramp catastrophe. Furthermore, there is no evidence within his military records which indicate misconduct played a role in his injuries. He was never reprimanded for any serious misconduct and was never responsible for any misconduct that led to any physical or mental harm. He was unable to fulfill his duties; his physical and mental health worsened throughout his service as he was unable to sleep, lacked concentration, was consistently worried and fatigued, and was depressed. His unfitness for service at the time of discharge is further accentuated through showing that those suffering from mental struggles, like PTSD, often suffer in silence, meaning although not fully documented, does not mean he was fit to serve simply because it was not documented. His psychotherapist indicated the emotional suppression through dissociative processes was a survival mechanism that allowed for his temporary functionality and these subconscious survival mechanisms and fear of losing his career clearly indicate a proper explanation for a lack of PTSD documentation during his military service. He has now been 100 percent service-connected disabled by the Department of Veterans Affairs (DVA) mostly due to PTSD which was undiagnosed during his military service.

AFBCMR Docket Number BC-2024-01190

He had honorable service from 8 Jul 88 to 4 Nov 09 for a total of over 20 years which make him eligible for retirement. His good years of service from 1 Jun 03 to 4 Nov 09 are missing from his records even though he was not discharged until six years later.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force Reserve (AFR) staff sergeant (E-5).

On 5 Nov 06, DD Form 4/1, *Enlistment/Reenlistment Document Armed Forces of the United States*, indicates the applicant reenlisted in the AFR for three years.

On 11 Mar 08, Reserve Order- [REDACTED] indicates the applicant was relieved from assignment at [REDACTED] and assigned to ARPC noting a conflict with civil employment.

Dated 10 Nov 09, Reserve Order [REDACTED] indicates the applicant was honorably discharged from the AFR, effective 4 Nov 09.

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

APPLICABLE AUTHORITY/GUIDANCE

DoDI 1215.07, *Service Credit for Reserve Retirement*, Section 3, paragraph 3.1.a. - Pursuant to Chapter 1223 of Title 10, U.S.C., a qualifying year of creditable service toward a non-regular retirement is a full-year, as described in paragraphs 3.1.b. and 3.1.c., *Establishing and Adjusting Anniversary Years*, during which a member of an Active Component (AC) or Reserve Component (RC) is credited with at least 50 retirement points. Accumulating 20 such years, except as otherwise provided by law, is one requirement necessary to qualify for non-regular retired pay.

On 25 Aug 17, the Under Secretary of Defense for Personnel and Readiness (USD P&R) issued clarifying guidance known as the Kurta Memo, 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 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 U.S.C. Section 1552. It is DoD policy the application of liberal consideration does not apply to fitness determinations; this is an entirely separate Military Department in determining 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.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor completed a review of all available records and finds insufficient evidence to support the applicant's request for a medical retirement; finding the preponderance of evidence insufficient to suggest the applicant was unfit for duty during his time in service (both active and reserve) or at discharge from a psychological perspective. His records indicate he was regularly seen and evaluated for mental health conditions, and he did not meet the criteria for a service connection for a mental health condition until 2021, approximately 12 years after his discharge from the AFR.

The applicant and counsel contend he developed PTSD from events that occurred in 1993 and 1994 and at the time of his service, he was unfit due to his mental health condition of PTSD. Records indicate the applicant was evaluated on 7 Apr 97, three to four years after the incident. At that time, he did not meet the criteria for any mental health condition to include PTSD. The provider noted some occupational issues but concluded he did not have a mental health condition that would preclude his placement on flight status. He was determined to have no or minimal mental health symptoms. In the subsequent available mental health encounter, dated 12 Dec 19,

ten years after military discharge, he was diagnosed with major depressive disorder. The provider noted the applicant had only been having symptoms for the past couple of years. He was not diagnosed with PTSD or determined to have a mental health service connection at this time. He continued to be seen by mental health regularly through 12 Jan 21. Notes from 23 Jan, 28 Jan, 4 Mar, 5 Mar, 16 Oct, and 14 Dec 20 all diagnosed him with alcohol use disorder, but not PTSD, nor any other mental health condition. On 12 Jan 21, he was again diagnosed with major depressive disorder. The encounter from 4 Mar 20 noted he started having serious issues (mood, sleep, nightmares) in 2018, nine years after his military discharge.

The applicant had his first Compensation and Pension (C&P) examination on 24 Mar 20. The examiner specifically noted he did not meet Diagnostic and Statistical Manual of Mental Disorders (DSM) criteria for PTSD but had an adjustment disorder that was not severe enough to interfere with occupational or social functioning. The examiner noted inconsistencies with one of his trauma accounts, in that it was not an attack, but a fight/altercation. It is noted the applicant received a NJP for this incident and was demoted. Records also indicate he was confined for a time. Additionally, the examiner determined his other stressor event did meet criterion A for PTSD, but he did not meet criterion B through I to be diagnosed with PTSD. He was not given a mental health service connection following this C&P examination. A C&P examination on 4 Aug 21 diagnosed him with PTSD. He was awarded a service connection for PTSD with an effective date of 23 Apr 21, 12 years after his military service.

It should be noted that the military's Disability Evaluation System (DES), established to maintain a fit and vital fighting force, can by law, under Title 10, U.S.C., only offer compensation for those service incurred diseases or injuries which specifically rendered a member unfit for continued active service and were the cause for career termination; and then only for the degree of impairment present at the time of separation and not based on post-service progression of disease or injury. To the contrary, the DVA, operating under a different set of laws, Title 38, U.S.C., is empowered to offer compensation for any medical condition with an established nexus with military service, without regard to its impact upon a member's fitness to serve, the narrative reason for release from service, or the length time transpired since the date of discharge. The DVA may also conduct periodic reevaluations for the purpose of adjusting the disability rating awards as the level of impairment from a given medical condition may vary (improve or worsen) over the lifetime of the veteran. There appears to be evidence the DVA, did in fact, adjust his disability rating as his mental health condition worsened over the years since his discharge. There is insufficient evidence to suggest any mental health condition impacted his fitness for duty. There is no evidence to support he had a mental health condition while in the military or at discharge. Even if he had been diagnosed with a mental health condition there is no evidence it was unfitting.

Being diagnosed with a mental health condition does not automatically render a condition as unfitting. More information is required to determine unfitness such as being placed on a permanent duty limiting condition (DLC) profile for a mental health condition, being deemed not worldwide qualified (WWQ) due to a mental health condition, and impact or interference of the condition on the service member's ability to reasonably perform their military duties in accordance with their office, grade, rank, or rating. These designations were absent from his records. Additionally, the

applicant earned good to exemplary ratings on his performance evaluations and was promoted throughout his military career to the grade of staff sergeant, despite demotion following an Article 15 in 1993. The Psychological Advisor concludes there is insufficient evidence to support any potential mental health condition the applicant had did not have an impact on his ability to perform the duties of his office, grade, rank, and rating.

Counsel contends the applicant was never reprimanded for any serious misconduct. While he was not separated for misconduct; the applicant did receive NJP punishment in 1993 for unlawfully pushing an airman first class on the chest with both hands and was demoted and confined for a period of time. Counsel also contends the applicant's psychotherapist indicated the emotional suppression through dissociative processes was a survival mechanism that allowed for his temporary functionality and these subconscious survival mechanisms and fear of losing his career clearly indicate a proper explanation for a lack of PTSD documentation during the applicant's military service. With all due respect to the licensed clinical social worker (LCSW), his professional opinions are purely speculative. It has been 12 years since his discharge from the military, and 27 years since his reported trauma. External stressors, experiences, and progression of the condition or disease more likely than not may have influenced and impacted the applicant's clinical presentation during the LCSW's evaluation conducted in 2021. Again, his evaluations are applicable to the applicant's presentation at the time of evaluation and not during the applicant's military service. Additionally, there is no evidence of a dissociative process or a lack of proper PTSD documentation. The applicant was seen by mental health providers over the years, starting in 1997, and determined to not meet the criteria for PTSD until 2021, twelve years after military discharge.

The complete advisory opinion is at Exhibit C.

The AFBCMR Medical Advisor recommends denying the applicant's request for a medical retirement. It appears the applicant was not a victim of an error or injustice and his discharge processing as well as the narrative reasoning for separation were appropriate and accomplished in accordance with Air Force policy. A post-service DVA disability rating is not synonymous or equivalent to the military's disability evaluation near the time-of-service separation. The burden of proof is placed on the applicant to submit evidence to support his request. The evidence he did submit was assessed to not support his request as written.

Medically, a sprain occurs when fibers in one of the ligaments surrounding or in the joint overstretch or tear. Ligaments are tough cords of tissue that connect and support bones and help keep the joint stable while moving. A sprain can be caused by any type of sudden impact to the joint. A sudden twist or another movement that stretches the ligament too far can also cause a sprain. A strain is different from a sprain in that it is a pull or tear that occurs in tendons, which are fibrous cords of tissue that attach muscle to bone. Strain-like stretches can also occur in the adjacent muscles surrounding the involved joint. A strain may occur after a dramatic increase in activity. For example, often individuals that suddenly increase their exercise activity (like beginning basic military training) can develop either a joint strain or sprain if proper preventive pre-stretching is not performed. Any activity or action that forces your joint to move farther than

its natural range can cause a sprain or strain. Sprains and strains are usually temporary conditions that do not adversely affect ones' ability to routinely play sports or remain active after a brief recovery time. It usually takes at least a few weeks for a sprained joint to heal. Recovery time for the more severe sprains/strains (partial to near complete tear) can take up to a few months. Rotator cuff tendinitis, also known as shoulder bursitis, impingement syndrome, or biceps tendonitis is a condition that occurs when the tendons in the shoulder become inflamed, irritated, and swollen. Likened to the above description of a sprain/strain, the usual recovery time for tendonitis of the rotator cuff is generally a few weeks and may be longer for locally severe inflammation. In this case, while the applicant is currently (post service) diagnosed with bilateral knee and bilateral shoulder conditions, there is insufficient evidence he met the potential unfitting criteria for such conditions during his time in service. It was not until 23 years after his military separation when the DVA service-connected these conditions as disabilities.

Having a medical diagnosis alone does not automatically render a service member unfit for duty for much more information is required to determine unfitness which includes being placed on a permanent DLC profile, being deemed not WWQ due to a medical condition, and impact or interference of the condition(s) on the service member's ability to reasonably perform their military duties in accordance with their office, grade, rank, or rating. Such designations were absent from the applicant's submitted records as well as the DoD's record data base. From the obtainable records, it appeared the applicant was never determined to have any DLCs or placed on an extended or permanent profile, he remained WWQ, and he was able to perform his military duties as well as those duties required of a police officer. His service record demonstrated such abilities. His performance evaluations show his exemplary performance where he continually earned the highest ratings with comments such as exemplifies top military standards, sets the example for others to follow and meets all Air Force fitness standards. Firefighters also routinely undergo annual physical examinations as dictated by regulatory guidance on occupational medical standards and no such evidence was contained in the case file. While counsel contends the applicant's physical ailments were caused by constant physical work behind active duty, a sensible understanding of such verbiage remains elusive at best. Constant physical work behind active duty is not a description to any specific military occupation, but rather can be applicable to all job positions and the presented evidence in this case failed to show a physical condition as meeting the level of unfitness for duty performance. Given the known medical knowledge behind the healing pathophysiology of joint sprains and strains, the Medical Advisor finds near zero confidence in formulating a timeframe nexus to diagnoses... 23 years later that are known to heal within weeks to a few months.

The applicant cited DVA disability ratings for his combined medical conditions. He specifically noted his service-connected 100 percent rating and appeared to request a similar rating should have been decided by the military, thus placing him on track to a possible medical retirement. However, as stated in the mental health advisory above, the DVA is authorized to offer compensation for any medical condition determined service incurred, without regard to and independent of its demonstrated or proven impact upon a service member's retainability, fitness to serve, or the length of time since date of discharge.

The complete advisory opinion is at Exhibit D.

ARPC/DPTT recommends denying the applicant's request for a regular Reserve retirement finding no evidence of an error or injustice. The applicant has a total of 18 years of satisfactory military service and does not qualify to receive a Reserve retirement because he did not accumulate a total of 20 years or more of satisfactory military service, per Title 10 U.S.C. Section 12732. The applicant has a total of 21 years in the service; however, 3 years of those years were not satisfactory years and therefore the applicant has 18 years of satisfactory military service.

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 20 Dec 24 for comment (Exhibit F) and the applicant responded on 20 Jan 25. In his response, through counsel, he contends both medical advisories opined his medical conditions founded 12 years have his discharge had no nexus between his service and disqualifying conditions to qualify for processing through the DES. However, he did meet the criteria for processing through the DES because he suffered injuries which were service-connected, not through misconduct, and were severe enough to warrant his inability to continue his service. Even though his injuries were not diagnosed during service, the DVA determined his injuries were service-connected which were incurred as a result of his firefighter duties. Furthermore, he experienced a traumatic event while in service approximately six years into his career. Prior to this, he did not receive any adverse action or misconduct; however, following the trauma from the crash, he reported fatigue, sleeping difficulties, a lack of concentration, consistent worry, and depression, and these troubles followed him to the Reserves, where he started losing it in [REDACTED] during interactions with his supervisors which he never experienced before. Such a rapid decline, despite his successful duty performance following the incident, highlights the potential to have a disqualifying condition. The existence of Air Force documentation, diagnosing him with a disqualifying condition, should not make or break his case. As described in the Kurta memo, his statement alone can serve as sufficient evidence to carry his burden before the Board.

The applicant's complete response is at Exhibit G.

FINDINGS AND CONCLUSION

1. The application was not timely filed. 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, United States Code, and Department of the Air Force Instruction 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*.
2. The applicant exhausted all available non-judicial relief before applying to the Board.

3. After reviewing all Exhibits, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of the AFRBA Psychological Advisor and the AFBCMR Medical Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. Specifically, the Board finds the applicant did not have a disqualifying medical or mental health condition which would meet the criteria to be processed through the DES. He may have exhibited minimal mental health symptoms and had various medical issues during his military career, however, the Board finds none of his conditions were unfitting. The mere existence of a medical or mental health diagnosis does not automatically determine unfitness and eligibility for a medical separation or retirement. The applicant's military duties were not degraded due to his medical or mental health conditions. He was not diagnosed with PTSD until a decade later and his bilateral knee and bilateral shoulder conditions did not render him unable to perform his military duties. A Service member shall be considered unfit when the evidence establishes the member, due to physical disability, is unable to reasonably perform the duties of his or her office, grade, rank, or rating. The Board noted the applicant's DVA disability ratings; however, a rating by the DVA, based on new and/or current exams conducted after discharge from service, does not warrant a change in the member's separation. The military's DES established to maintain a fit and vital fighting force, can by law, under Title 10, U.S.C., only offer compensation for those service incurred diseases or injuries, which specifically rendered a member unfit for continued active service and were the cause for career termination; and then only for the degree of impairment present at or near the time of separation and not based on post-service progression of disease or injury. Additionally, the Board concurs with the rationale and recommendation of ARPC/DPTT in finding the applicant does not have enough satisfactory years served in order to qualify for a Reserve retirement. Even though the applicant has a total of 21 years, 3 of those years were not satisfactory years. In order to qualify as a satisfactory year, a member must be credited with at least 50 retirement points; however, the Board finds the applicant was not credited with enough points for the last three years of his enlistment. Lastly, the applicant's counsel states the applicant's statement alone should be sufficient evidence to carry his case forward for DES processing as outlined in the Kurta memo. However, based on the 4 Apr 24 memorandum from the Under Secretary of Defense for Personnel and Readiness, known as the Vazirani Memo, stating boards should not apply liberal consideration (Kurta memo) 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; the Board finds the applicant's request for a medical retirement to be considered under this memorandum is not warranted. Therefore, the Board recommends against correcting the applicant's records.

RECOMMENDATION

The Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

CERTIFICATION

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2024-01190 in Executive Session on 15 Jan 25 and 24 Apr 25:

Panel Chair

Panel Member

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 Feb 24.

Exhibit B: Documentary evidence, including relevant excerpts from official records.

Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 20 Aug 24.

Exhibit D: Advisory Opinion, AFBCMR Medical Advisor, dated 10 Dec 24.

Exhibit E: Advisory Opinion, ARPC/DPTT, w/atch, dated 19 Dec 24.

Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 20 Dec 24.

Exhibit G: Applicant's Response, dated 20 Jan 25.

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.

24/2025

Board Operations Manager, AFBCMR
Signed by: USAF

AFBCMR Docket Number BC-2024-01190