

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-02119

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His official military personnel records be amended to:

- a. Reflect a medical retirement.
- b. Restore his grade to technical sergeant (E-6).

APPLICANT'S CONTENTIONS

Traumatic Brain Injury (TBI) and Post-Traumatic Stress Disorder (PTSD) were the underlying causes of his discharge.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an honorably discharged airman basic (E-1).

In 2003, according to the AFRBA Psychological Advisor advisory opinion, dated 12 Nov 24, the applicant sustained a TBI.

On 2 Mar 04, according to AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, the applicant was issued nonjudicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ) for:

- Violation of Article 111:
 - [The applicant] did, at or near Pope Air Force Base, North Carolina, on or about 17 Jan 04, at the Manchester Gate, operate a motor vehicle, to wit: a 2002 Ford Explorer, while drunk.

The applicant received a reprimand and was reduced to the grade of staff sergeant (E-5), with a new date of rank of 2 Mar 04.

On 22 Jun 04, according to AF Form 3212, *Record of Supplementary Action Under Article 15, UCMJ*, that portion of the applicant's NJP which called for reduction to the grade of staff sergeant (E-5) was suspended and will be remitted without further action if not vacated before 8 Dec 04.

On 12 Apr 06, according to AF Form 3070, the applicant was issued NJP under Article 15, UCMJ for:

- Violation of Article 134:
 - [The applicant] was, at or near Fort Walton Beach, Florida (FL), on or about 4 Feb 06, drunk, which conduct was of a nature to bring discredit upon the armed forces.

The applicant received a reprimand and was reduced to the grade of staff sergeant (E-5), with a new date of rank of 12 Apr 06.

On 25 May 06, according to AF Form 3070, the applicant was issued NJP under Article 15, UCMJ for:

- Violation of Article 109:
 - [The applicant] did, at or near Crestview, FL, on or about 3 May 06, recklessly damage by hitting with a Ford Ranger pickup truck, a power pole, at the amount of said damage being in the sum of about \$3,000.00, the property of Gulf Power.

- Violation of Article 111:
 - [The applicant] did, at or near Crestview, FL, on or about 3 May 06, physically control a vehicle, to wit: a Ford Ranger pickup truck, while drunk.

The applicant received a reprimand and was reduced to the grade of senior airman (E-4), with a new date of rank of 25 May 06.

On 27 Jun 06, according to the AFRBA Psychological Advisor advisory opinion, dated 12 Nov 24, the applicant was diagnosed with PTSD.

In Oct 06, according to the AFRBA Psychological Advisor advisory opinion, dated 12 Nov 24, the applicant was diagnosed with Cognitive Disorder NOS [Not Otherwise Specified].

On 13 Dec 06, according to AF Form 3070, the applicant was issued NJP under Article 15, UCMJ for:

- Violation of Article 92:
 - [The applicant], having knowledge of a lawful order issued by the XX SOW/CC, to refrain from consuming alcoholic beverages at Hurlburt Field, FL, an order which it was his duty to obey, did, on or about 10 Dec 06, at Hurlburt Field, FL, fail to obey the same.
 - [The applicant], having knowledge of a lawful order issued by the XX OSS/CC, to refrain from consuming alcoholic beverages, an order which it was his duty to obey, did, on or about 10 Dec 06, at Hurlburt Field, FL, fail to obey the same.

- Violation of Article 107:
 - [The applicant], did, on 10 Dec 06, at or near Hurlburt Field, FL, with intent to deceive, make to XX SOSFS personnel an official statement, to wit: that a computer that was found at the front gate of Hurlburt Field, FL was not his, or words to that effect, which statement was totally false, and was then known by him to be so false.

- Violation of Article 134:
 - [The applicant], did, at or near Hurlburt Field, FL, on or about 10 Dec 06, unlawfully enter Hurlburt Field, FL.

The applicant was reduced to the grade of airman basic (E-1), with a new date of rank of 13 Dec 06.

On 21 Dec 06, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant received an under other than honorable conditions (UOTHC) discharge. His narrative reason for separation was "Pattern of Misconduct" with a reentry code of 4D [Grade is senior airman or sergeant, completed at least 9 years TAFMS, but fewer than 16 years TAFMS,

and has not been selected for promotion to staff sergeant]. He was credited with 14 years, 9 months, and 18 days of total active service.

On 19 Jul 18, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 18 Jul 19, the AFDRB concluded neither the evidence of record, nor that provided by the applicant substantiated an impropriety. However, sufficient evidence existed to convince the AFDRB the discharge was inequitable due to the applicant's ability to serve satisfactorily due to the TBI and PTSD. Therefore, the AFDRB determined the overall characterization of the applicant's service was more accurately reflected by an honorable discharge and the discharge narrative reason was more accurately described as "Secretarial Authority." Additionally, the reenlistment eligibility code was administratively changed to "2C" [Involuntarily separated with an honorable discharge].

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

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 Title 10, United States Code § 1552 (10 USC § 1552). It is DoD policy the application of liberal consideration does not apply to fitness determinations; this is an entirely separate Military Department determination regarding whether, prior to "severance from military service," the applicant was medically fit for military service (i.e., fitness determination). While the military corrections boards are expected to apply liberal consideration to discharge relief requests seeking a change to the narrative reason for discharge where the applicant alleges combat- or military sexual trauma (MST)-related PTSD or TBI potentially contributed to the circumstances resulting in severance from military service, they should not apply liberal consideration to retroactively assess the applicant's medical fitness for continued service prior to discharge in order to determine how the narrative reason should be revised.

Accordingly, in the case of an applicant described in 10 USC § 1552(h)(1) 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 31 Jan 25, Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

AFI 51-202, *Nonjudicial Punishment*, dated 7 Nov 03, Chapter 3 – *Procedures for Initiating and Imposing Nonjudicial Punishment*:

3.17. *Permissible Punishments*. Table 3.1. and Table 3.2. set out the maximum permissible punishments, based on the grade and status of the commander and grade of the member.

Table 3.1. *Enlisted Punishments. Punishment: Reduction:*

Imposed by a Lieutenant Colonel or higher: Technical Sergeant – One grade; Staff Sergeant – One grade; Senior Airman to Airman Basic.

Imposed by a Major: Senior Airman to Airman Basic.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds sufficient evidence to support the applicant's request for a medical retirement for his mental health condition but no evidence to support his request to restore his rank. This Psychological Advisor recommends the applicant's mental health condition of Cognitive Disorder NOS or Organic Mental Disorder, Other (including personality change due to a general medical condition), Veterans Administration Schedule for Rating Disabilities (VASRD) Code 9327, and PTSD, VASRD Code 9411, be found unfitting with a combined rating of 50 percent.

The applicant's service treatment records were sometimes vague or lacking crucial information. There were numerous instances of his providers referring the reader to view the Life Skills Support Center or separate records for more information. For historical reference, the military transitioned from paper records to electronic medical records, previously known as the Armed Forces Health Longitudinal Technology Application (AHLTA) and now Joint Longitudinal Viewer (JLV), starting as early as 2003, and may not have fully transitioned to this electronic records system until 2008 at the latest. This was the timeframe the applicant was receiving mental health and medical treatment from the military. Some paper records may not have been transferred to AHLTA during the transition period. As a result, this is a plausible reason his paper records were not available for review.

A review of the available records via JLV and paper records (previously submitted to the AFDRB) finds there is clear evidence the applicant had sustained a TBI or head injury with a brief loss of consciousness from a parachute jump during service. The date when he sustained a TBI was reported inconsistently in his records, either occurring in Feb 03 or Aug 03. It appeared through the applicant's DVA treatment records he may have sustained more than one TBI during service due to the nature of his Air Force Specialty Code of being a pararescue craftsman. Regardless of the anomaly, the applicant's records reflected he sustained a TBI sometime in 2003. This incident led him to experience headaches/migraines, problems with processing information, difficulties remembering and learning new information, sleep problems, irritability, and engaging in alcohol abuse. The applicant received psychological testing twice during service, on 26 May 06 and 18 - 19 Oct 06 respectively. His first test results in May 06 found his cognitive impairment could have impacted his military service. The full psychological testing report was not available for review and the provider did not elaborate on this assessment in the treatment records. Nevertheless, the provider indicated there was an impairment to the applicant's functioning in the military caused by his mental health issue. No specific cognitive, personality, or other psychiatric disorder except Alcohol Dependence was derived from this assessment. The second test results in Oct 06 provided more robust findings and explanations of his cognitive functioning. Specifically, the psychological testing results/report found, "*He shows weak verbal information encoding and learning with associated impaired verbal memory recall. Information he needs to learn becomes confounded by interference effects, leading to poor discriminability*"; "*At the present time, cognitive symptoms and deficits are predominately inefficiencies and weaknesses in information processing. These*

appear to be perpetuated by emotional factors, including depression, anxiety and post-traumatic stress”; “Cognitive deficiencies revealed in this assessment might impose limits on his advancement and ability to learn and remember new information for work and school”; and “Based on his overall performance during this testing, [the applicant] is experiencing specific cognitive impairments in mental processing efficiency and memory encoding. These deficits make it more challenging for [the applicant] to function in routine military duty at this time.” The applicant was given a diagnosis of Cognitive Disorder NOS from this evaluation. From these two psychological testing results, there is evidence of an impairment in the applicant’s ability to function in the military caused by his mental health status/condition/concern.

The applicant was also diagnosed and treated for chronic PTSD during service. The traumatic events causing him to meet the diagnostic criteria for PTSD were not related to his TBI/head injury but to his overseas combat deployments. He was assigned to a special operations unit and deployed many times to combat zone areas during his military career. The applicant was first diagnosed with PTSD on 27 Jun 06, three years after his TBI. From his treatment records and psychological testing results, the applicant’s emotional issues such as anxiety and depressive symptoms from PTSD exacerbated his cognitive difficulties. These difficulties also led him to cope with alcohol.

There were various opinions and records about whether the applicant was unfit for continued military service. His first primary mental health provider, a prescribing psychologist, had considered him for a Medical Evaluation Board (MEB) for PTSD. The applicant was repeatedly determined to be not worldwide qualified, was on Duty, Not Including Flying status, had duty limitations of “Do Not Jump,” and was on an S4T profile for his psychiatric/mental health condition. Despite these restrictions, the provider later cited the decision to not initiate an MEB was because the applicant’s mental health condition did not appear to have any effect on his duty performance even though he had reported difficulties with concentration and memory and psychological testing administered by this same provider had found the test results could have an impact on his military service. The applicant’s second primary mental health provider, a psychiatrist, also reported he had the same duty restrictions and considered him for an MEB as well. The applicant was referred to neuropsychological testing for an MEB by his psychiatrist, and the neuropsychological testing results, as discussed previously, found his cognitive impairments and deficits made it more challenging for him to function in routine military duties. The neuropsychologist did not explicitly recommend the applicant be referred to the MEB for his cognitive difficulties, but the results implied he potentially had an unfitting condition. The reason the applicant’s psychiatrist did not refer him to the MEB was not clearly documented in his treatment records, but the psychiatrist (treatment termination note) and the applicant’s Primary Care Manager (separation physical examination) did note that his symptoms/condition had improved with medication treatment.

The timeline of events and other extraneous factors may have been aspects in the decision to not refer the applicant to the MEB, per his records. The applicant’s alcohol problems continued to be a longstanding issue that disrupted his treatment with Alcohol and Drug Abuse Prevention and Treatment (ADAPT) and caused him to engage in another alcohol-related misconduct problem after he had completed neuropsychological testing. Before the applicant met with his primary mental health care providers, he had already received at least three Article 15s for operating a vehicle while drunk or driving under the influence (DUI) in Jan 04, Feb 06, and May 06. There are no records confirming the applicant was command-referred to ADAPT following his first or second alcohol-related incidents, but he finally met with ADAPT for an evaluation and treatment for his alcohol issues after his third Article 15 in early May 06. The applicant relapsed while enrolled in ADAPT and was determined to be an ADAPT failure on 17 Nov 06, a few weeks after he completed his neuropsychological testing. From an entry note dated 21 Nov 06 into the applicant’s service treatment records, the ADAPT Element Chief was preparing a report for his commander which most likely informed the commander of his ADAPT failure and recommendation for administrative separation. The applicant was recommended and received

inpatient detoxification treatment following his relapse. A few weeks later, on 10 Dec 06, and 11 days before he was separated from the Air Force, the applicant engaged in another alcohol-related incident of failing to refrain from consuming alcohol, resulting in his fourth Article 15. It is not known from the available records when the applicant's administrative separation was initiated, but his disruptive behaviors from his alcohol dependency problems caused numerous issues with his treatment and with his command that led to his discharge for a pattern of misconduct. Since the applicant had already engaged in numerous alcohol-related incidents and his administrative discharge was in progress or imminent, his psychiatrist may not have initiated or referred him to the MEB due to these reasons. Additionally, because an MEB may take too long to complete, the applicant may not be able to tolerate the stressful military environment during the MEB process. This may have caused him to engage in additional misconduct, causing more problems to his squadron; another potential reason the applicant was not referred to the MEB. These are all speculations but are likely based on the applicant's clinical presentation and timeline of events documented in his records.

The applicant's alcohol dependency problems may have mistakenly been conceptualized as his primary condition but was actually a secondary condition. Due to the magnitude of his alcohol problems via multiple Article 15s and possibly legal problems, these problems overshadowed the applicant's other primary underlying mental health conditions of TBI/cognitive deficits and PTSD. There is ample evidence the applicant's alcohol abuse problems were developed in response to his TBI/cognitive difficulties and PTSD. He was coping with his difficulties with alcohol. This was most likely the reason the AFDRB upgraded his character of service from UOTHC to honorable because there was a nexus between his TBI and PTSD to his misconduct and discharge. This Psychological Advisor concurs with the AFDRB's opinion. The applicant did not have alcohol problems before he sustained a TBI in 2003, and his alcohol problems began after his TBI. The applicant's first DUI occurred on or about 17 Jan 04, within one year of his TBI. There are no records the applicant had any other misconduct problems before his TBI. There was clearly a behavioral change within the applicant following his TBI in 2003, and this was also evidenced by his Enlisted Performance Reports (EPR). The applicant had exceptional work performance consistently for 12 years until he received a rating of 2/5 for the rating period of 21 Mar 04 to 23 Dec 04, which was after his TBI in 2003, for unauthorized charges on his government travel card and his security clearance being suspended due to his alcohol abuse. This reduced rating was a significant departure from the applicant's past performances. Again, he did not have any misconduct problems before his TBI, and these misconducts and problems were unusual for him and deviated markedly from his premorbid or regular functioning. The applicant's TBI was an intervening event that caused his behavioral changes. He had 12 years of demonstrated stellar performance and functioning and then there was stark decompensation of his functioning following his TBI. There is medical evidence and research studies that have established sustaining a TBI may change one's behaviors, mood, and cognitive functioning. The applicant's injury and behavioral and cognitive history support this impression. His documented history of complications following his TBI was plentiful, but there are no records he received mental health treatment specifically for his cognitive difficulties. The applicant was tested to determine his cognitive impairment and level of his impairment but received no actual specific treatment to help him learn strategies and cope with his cognitive deficits, which was his primary concern. The applicant's cognitive deficits also caused impairments to his decision-making and judgment that led to his alcohol use and misconduct. Should the applicant have received treatment to address his cognitive difficulties, his difficulties may have possibly improved.

The applicant's records indicated he continued to deploy almost immediately after his TBI, and these subsequent deployments caused him to develop PTSD. It is noteworthy to mention in the applicant's last EPR for the rating period of 24 Dec 04 to 23 Dec 05, he received the maximum rating of 5/5, which was an increase from the previous of 2/5 and would demonstrate improvement in his work performance. It is possible the applicant had improved during this time, but the improvements were not persistent or long-lasting. After this rating period, the applicant did not

receive another EPR even though he stayed in the service for another year. His PTSD developed around or after this last EPR and complicated his pre-existing TBI and emotional functioning that also led him to cope with alcohol. The applicant's last year in the service was marred with continuous alcohol-related and misconduct problems that led to his subsequent administrative separation. He was treated for PTSD, but his treatment primarily consisted of medication management. The applicant did not receive any evidence-based trauma-focused therapy to help him process his traumatic experiences or cope with his PTSD symptoms. He was referred to a PTSD program at Walter Reed, but no records are available to verify this referral was completed. The applicant did regularly engage in outpatient treatment through ADAPT and received inpatient rehabilitation treatment at least three times for his alcohol dependency problems. He eventually failed ADAPT treatment because he was unable to refrain from drinking. This Psychological Advisor opines the reason the applicant failed ADAPT treatment, despite receiving numerous higher levels of care, was that he was being treated for a secondary condition of alcohol dependency problems versus being treated for his primary conditions of TBI and PTSD. The neuropsychologist had opined the effects of the applicant's emotional factors of anxiety, depression, and PTSD could be adequately controlled with medication and psychotherapy and made this recommendation. The applicant did not receive the recommended co-therapy treatment during service despite beginning treatment several months before his neuropsychological testing. His psychiatrist stated the applicant's symptoms had improved with medication management treatment which may be a reason he was not referred to the MEB, but his improvement was brief and not sustained. The applicant continued to drink and engaged in an alcohol-related incident about 11 days before his discharge from service. If his PTSD symptoms/condition had improved, his alcohol problems would also improve, and this was not his situation. The applicant did not receive the types of treatment that he needed and that were recommended, which could have helped him better manage his alcohol issues and improve his functioning.

This Psychological Advisor finds there is evidence through the applicant's service treatment records, as summarized above, to support the applicant's mental health conditions of Cognitive Disorder NOS and PTSD were unfitting for continued military service and he should have been referred to the MEB. Both of his primary mental health care providers had designated he had duty limitations because of his mental health condition and considered referring him to the MEB. They did not adequately or convincingly document their reasons for why the applicant should not be referred to the MEB. To reiterate, the applicant's first primary mental health provider stated his test results could have an impact on his military service yet, he was placed on duty limitations and unable to perform his full military duties because of his mental health condition. The applicant's provider did ask the applicant to consider how his PTSD had impacted his performance, and he suggested he had some difficulties with concentration and memory, per his treatment notes dated 14 Aug 06. This Psychological Advisor finds the applicant's response discerning and the provider missed this opportunity to assess his response further. The applicant stated he had memory problems, and it was well-known he had cognitive difficulties from his TBI, even by this provider. Because of his cognitive impairment, the applicant may not know how to articulate his difficulties or be aware of them. In these types of circumstances, collateral information should be obtained from his leadership, parent, spouse, or any other person who may be able to attest to his pre- and post-morbid functioning or how the applicant's cognitive problems and/or PTSD had impacted his overall functioning. Treatment notes dated 27 Jun 06 from his provider reported an MEB would be initiated and had discussed this with the applicant's squadron commander. A few sessions later, on 14 Aug 06, the provider discussed with the applicant the "thinking behind decision not to initiate MEB" because the impact on his duty performance did not appear to have an effect. It was not clear from the note if this decision was based on a conversation with the applicant's commander. The applicant did submit a letter from this same commander, dated 22 Sep 17 for his previous petition with the AFDRB supporting his request for an upgrade to honorable that he also submitted with his petition to the Air Force Board for Correction of Military Records. The applicant's former commander attested in his letter to the AFDRB, "*During the course of his career, [the applicant] sacrificed much. First, his health. In training and operations, he received both chronic and*

episodic injuries due to being a career paratrooper, combat diver and pararescueman. Most significantly, he received a head injury on active duty that was categorized as Traumatic Brain Injury. His injuries continue to plague him to the present day as he struggles with chronic back, joint and nerve damage. In addition to his health, his family suffered. Long deployments, frequent separations (with an opstempo/perstempo among the highest in the Air Force) and ever-present job stress took their toll on his family and marriage, the latter of which ended in divorce.” The applicant’s commander added, *“Due in part to the stresses of his profession as well as the pains of his injuries, [the applicant] fell victim to alcohol - which eventually ended his career. While he has ‘owned’ his alcoholic behavior and taken responsibility for his actions, I believe that [the applicant’s] intensity and drive also contributed... and that he sought relief from a host of health and job stresses through his drinking. Though he has never blamed injuries or job stress for his problems, I see all too clearly that both contributed to his alcoholism.”* If a conversation with his commander had taken place, as stated in the applicant’s records, then the provider would be able to determine his TBI and emotional stressors from his military duties had taken a toll on him, impaired his functioning including family and relationships, and caused him to cope with alcohol. Another alternative and not mandatory action that would be helpful in determining if he was unfit was his provider could have sent him through the process of a RILO [Review In Lieu Of] an MEB to determine if the applicant had any potentially unfitting mental health conditions. His psychiatrist also did not elect to send the applicant to the MEB despite his neuropsychological testing results that were requested by the psychiatrist. Again, the improvements in the applicant’s PTSD symptoms/condition were short-lived, and this would be an indication his medication treatment was not effective for him. It is also acknowledged both providers had given the applicant a diagnosis of PTSD with a “chronic” specifier. This specifier implied this condition has persisted for over a prolonged period and the applicant’s condition was not acute. Having chronic PTSD may also indicate the applicant’s condition had continued to impact his functioning for that prolonged period as well.

This Psychological Advisor finds there is an error and injustice with the decision surrounding the applicant’s MEB. He should have been referred to the MEB because his mental health condition of Cognitive Disorders NOS and PTSD had caused impairment to his ability to satisfactorily perform his military duties as determined in his comprehensive neuropsychological testing and other treatment records. Should the applicant have been referred to the MEB for his condition of Cognitive Disorder NOS and PTSD, he would have been then referred to the Physical Evaluation Board (PEB) and entered the Disability Evaluation System (DES). The PEB would have found these conditions unfitting for continued military service. The applicant’s condition of Cognitive Disorder NOS most likely was stable since it had been three years status post injury, but his condition of PTSD was not stable as he needed additional and continuous treatment to determine if he would be amenable to more specialized treatment. Mental health conditions, no matter how many conditions are found unfitting, receive only one rating. Since his condition of PTSD was not stable, he would have been recommended to be placed on the Temporary Disability Retired List (TDRL) with a minimum rating of 50 percent and be re-evaluated within 18 months to determine the appropriate disposition of a permanent retirement, a reduced rating, or be returned to duty according to regulations. The applicant could only be on the TDRL for a maximum of three years. Since the applicant was not afforded the opportunity to go through the MEB, DES, and TDRL processes, the most proper and equitable procedure is to use his available service treatment records and DVA treatment records. He did attempt to seek mental health treatment at the DVA in Feb 08 and Mar 08, about 14 months after his discharge from service, which hypothetically would have been his TDRL and re-evaluation period. The applicant continued to have complaints of PTSD symptoms of depression, anxiety, irritability low frustration tolerance, poor sleep, hypervigilance, nightmares, and flashbacks since returning from Afghanistan. He also continued to have headaches, post-concussive migraines, and poor memory from his TBI. The applicant was unable to continue with treatment with the DVA because of his UOTHC character of service, so it is not known if his condition could have reached stability with treatment. There are no records the applicant received mental health treatment from community providers during

this hypothetical TDRL period. To give the applicant the benefit of the doubt and use his DVA treatment records in conjunction with his service treatment records, his symptoms and level of functioning were consistent with a 50 percent rating during the TDRL period. There was no evidence of improvement or decompensation of his symptoms during the hypothetical TDRL period and with this information, the applicant would have been removed from the TDRL and permanently retired with a 50 percent rating.

After an exhaustive review of the available records, this Psychological Advisor finds sufficient evidence to support the applicant's request for a medical retirement for his mental health conditions. This Psychological Advisor recommends the applicant be found unfitting for his mental health conditions of Cognitive Disorder NOS or Organic Mental Disorder, Other (including personality change due to a general medical condition) in accordance with the VASRD Code 9327 and PTSD, VASRD Code 9411, with a combined rating of at least 50 percent. This rating is the most appropriate and best resembles the severity and impairment of his conditions at the time of service/discharge and TDRL period.

For awareness, since the applicant has been service-connected by the DVA for his mental health condition: The military's DES, established to maintain a fit and vital fighting force, can by law, under Title 10, United States Code (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.

Lastly, to address his request to return his rank of E-6, although there is evidence the applicant's mental health condition caused him to drink which led to his numerous Article 15s resulting in several rank reductions over time, this Psychological Advisor finds the severity and frequency of his misconduct do not outweigh his disciplinary actions. Having a mental health condition does not exempt the applicant from assuming responsibility for the consequences of his repeated misconduct. The applicant's leadership gave him ample time and opportunities to repair his behaviors, and he was not receptive to their efforts. His mental health condition may explain the applicant's alcohol problems and alcohol-related misconduct but does not excuse, mitigate, or outweigh his disciplinary actions.

Liberal consideration is not applied to the applicant's request for a medical retirement because the updated clarifying guidance, the Vazirani Memorandum, published in Apr 24, clearly states liberal consideration does not apply to fitness determinations, which includes medical discharge, disability, and retirement requests. 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. The applicant already received an upgrade to honorable and a change of his narrative reason for separation from the AFDRB, so a bifurcated review is not necessary or required. Liberal consideration also does not apply to his request for rank restoration because this policy applies to discharge upgrade requests.

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 26 Nov 24 for comment (Exhibit E) 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 the AFRBA Psychological Advisor and finds a preponderance of the evidence substantiates the applicant's contentions in part. Specifically, the applicant's extensive service treatment records, as summarized by the AFRBA Psychological Advisor, support the applicant's mental health conditions of Cognitive Disorder NOS and PTSD were unfitting for continued military service and he should have been referred to the MEB. Had the applicant been referred to the MEB, he would have been evaluated by the PEB via the DES. While the applicant's condition of Cognitive Disorder NOS was stable, his condition of PTSD was not, which would have led to placement on the TDRL for a period of 3 years, with re-evaluation at 18 months. During this timeframe, there was no evidence of improvement or decompensation of his symptoms which would have resulted in removal from the TDRL and permanent retirement. According to the applicant's DVA treatment records, reviewed in conjunction with his service treatment records, his symptoms and level of functioning were consistent with a 50 percent rating, which is sufficient to justify granting the applicant's request for 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 therefore finds no basis to recommend granting that portion of the applicant's request. The reductions in grade which resulted from NJP imposed by his commander complied with AFI 51-202. Reduction was within the commander's authority, was reviewed by the Staff Judge Advocate, and found legally sufficient. Further, having a mental health condition does not exempt the applicant from assuming responsibility for the consequences of his repeated misconduct, and due to the severity and frequency of his misconduct, does not outweigh the disciplinary actions which led to his grade loss. The applicant's earlier request to the AFDRB successfully resolved his service characterization and narrative reason for separation; consequently, 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. 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: PTSD with Organic Mental Disorder, Other (including personality change due to a general medical condition), VASRD Code 9411-9327, with a rating of 50 percent. The applicant's unfitting conditions are combat-related.

b. On 21 Dec 06, he was discharged from active duty and, on 22 Dec 06, he was permanently retired with a compensable percentage for physical disability of 50 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-2024-02119 in Executive Session on 19 Mar 25:

, 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 13 Jan 24.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 31 Jan 25.
- Exhibit D: Advisory opinion, AFRBA Psychological Advisor, dated 12 Nov 24.
- Exhibit E: Notification of advisory, SAF/MRBC to applicant, dated 26 Nov 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