

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-03039

XXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His official military personnel record be amended to reflect a medical retirement.

APPLICANT'S CONTENTIONS

The applicant is requesting a disability retirement due to Schizophrenia, Undifferentiated Type. He wrote to the AFRC/CV requesting a disability retirement; however, he suffered congestive heart failure and spent four months in the intensive care unit before leaving with a new heart transplant. In addition to the explanation provided to the AFRC/CV, the applicant added in late 2002, and throughout 2003, he was in no state of mind to competently review his medical records for completeness or accuracy, nor was he able to assess he needed a disability retirement. It took 15 years before he could obtain full-time employment and that lasted less than 3 years. The applicant thinks the grave injustice was that he was in no state of mind to decide on disability retirement, but he was led to do so anyway. If he was mentally competent, instead of mentally incapacitated, he would have on 14 Oct 03 elected to have his case referred to the Formal Physical Evaluation Board (FPEB).

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an honorably discharged Air Force Reserve (AFR) major (O-4).

On 31 Aug 02, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant was honorably discharged from the Regular Air Force.

On 1 Sep 02, according to AF Form 133, *Oath of Office (Military Personnel)*, the applicant was commissioned as a Reserve of the Air Force.

On 11 Sep 02, according to Reserve Order XXXXX, the applicant was appointed as a Reserve of the Air Force, effective 1 Sep 02.

On 10 Oct 02, according to AF Form 348, *Line of Duty Determination*, the applicant was hospitalized on 9 Oct 02 for Brief Reactive Psychosis versus Bipolar Disorder (BPD). The applicant was absent without authority for more than 24 hours, a formal investigation was recommended, and an investigating officer was appointed.

On 7 Nov 02, according to DD Form 261, *Report of Investigation – Line of Duty and Misconduct Status*, a formal line of duty (LOD) investigation was completed, the applicant was diagnosed with Schizophrenia, Undifferentiated Type, and the finding was Existed Prior to Service (EPTS) – LOD Not Applicable.

On 26 Nov 02, according to a XXX AW/JA memorandum, Subject: Line of Duty Determination – [applicant], the Staff Judge Advocate concurred with the investigating officer's findings that the applicant's diagnosed condition of Schizophrenia, Undifferentiated Type, should be classified as EPTS – LOD Not Applicable.

On 23 Dec 02, according to an AFRC/SGP [Chief, Aerospace Medicine Division] memorandum, Subject: Review of Informal LOD – [applicant], a finding of EPTS – LOD Not Applicable for Reserve Service was recommended.

On 5 Feb 03, according to an AFRC/JA memorandum, Subject: Line of Duty (LOD) Determination – [applicant], a finding of EPTS – LOD Not Applicable for Reserve Service was recommended.

On 11 Apr 03, according to an AFRC/DPMB memorandum, Subject: Line of Duty Determination – [applicant], the final determination was EPTS – LOD Not Applicable.

On 6 Oct 03, according to an AFPC/DPPDS [President, USAF Physical Evaluation Board] memorandum, Subject: Fitness Determination – [applicant], provided by the applicant, the Informal Physical Evaluation Board (IPEB) found the applicant unfit to perform duties of his office, grade, rank, or rating for Veterans Administration (VA) Code: 9204, Diagnosis: Schizophrenia, Not Otherwise Specified.

On 20 Oct 03, according to an applicant memorandum, Subject: Selection of Rights to Formal Physical Evaluation Board (FPEB), provided by the applicant, he did not desire to have his case referred to the FPEB solely for fitness determination. He acknowledged discharge proceedings would be initiated, and he would be afforded the opportunity to apply for retirement in lieu of discharge, if eligible for retirement with pay.

On 30 Apr 04, according to Reserve Order XXXX, the applicant was honorably discharged from the AFR, effective 15 May 04, for physical disqualification.

On 20 Aug 13, according to a Department of Veterans Affairs (DVA) summary of benefits letter, provided by the applicant, he was granted service-connection for disability with an evaluation of 100 percent, and is considered to be totally and permanently disabled due to his service-connected disabilities.

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

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 Post-Traumatic Stress Disorder (PTSD) or Traumatic Brain Injury (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.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds insufficient evidence provided by the applicant and from his objective military records to support his request for the desired change to his record based on his mental health condition.

Review of the applicant's available records finds the applicant did not meet the criteria for a compensable or ratable medical discharge/retirement. The applicant's mental health condition of Schizoaffective Disorder, Undifferentiated Type, was found unfitting by the IPEB on 6 Feb 03, and he was discharged from the AFR for physical disqualification. Based on these two factors, he was technically medically discharged from the AFR but did not receive a disability rating or monetary compensation for his unfitting mental health condition. The reason for his non-compensable and non-ratable mental health condition was because of his LOD determination. The applicant received and was approved for a LOD determination of EPTS - LOD Not Applicable. What this finding means is that his mental health condition existed prior to his service with the AFR, and there is no evidence his service with the AFR permanently aggravated his EPTS condition beyond the natural progression of the disease or illness. His findings were supported by letters and records from two military psychiatrists dated 4 Nov 02, 6 Nov 02, and 21 Nov 02, all reporting his psychotic symptoms had begun during the time frame of May/Jun 02. The applicant was an active-duty service member in the Regular Air Force and was transitioning from active-duty service to the AFR during this timeframe. His treating psychiatrist at the Dwight D. Eisenhower Army Medical Center cited his behavior of failing to cash rent checks, removing all non-religious media materials from his home, and participating in several spiritual revivals that encouraged fasting occurring during this timeframe as indicators of psychosis. The applicant's psychiatrist also stated it was not until his entrance into the AFR that he became floridly psychotic. The applicant's psychiatrist implied he could have compensated for his symptoms because he was in a structured and familiar environment during his time on active-duty service as a reason his condition was not apparent or as disruptive to his functioning while on active-duty. The applicant's symptoms became more apparent when he entered the AFR because of the change in environment and structure in which he was no longer able to adapt, leading to significant impairment to his overall functioning. This Psychological Advisor concurs with the applicant's psychiatrist's opinion that a change in his environment and structure very likely contributed to the changes in his clinical presentation. Due to the onset of the applicant's mental health condition occurring during his active-duty service time, his mental health condition was considered a prior-service condition or existed prior to his service with the AFR. Since he was already extremely ill at the beginning of his initial reserve tour that required

hospitalization almost immediately, his mental health condition was determined to not have been aggravated by his reserve military duty as explained in a psychiatrist's report dated 21 Nov 02. Because there is no evidence of his military service and/or duties with the AFR having aggravated his EPTS condition, this resulted in the applicant's LOD determination. There is no error or injustice identified with his LOD determination. Should his military duties with the AFR have aggravated his EPTS condition, the applicant would have received a disability rating that would result in his desired compensable medical discharge/retirement. The applicant's available records contrasted with this notion. Even if he was able to appeal to the FPEB, the FPEB would have also found his mental health condition was EPTS and not service-aggravated, and the applicant would not receive a compensable or ratable medical discharge.

Although the applicant's mental health condition was discovered to have begun during his active-duty service time, there is no evidence his mental health condition was unfitting during his active-duty service time. There is no evidence or records he was ever placed on a duty limiting condition profile for his mental health condition, was ever deemed not worldwide qualified due to his mental health condition, and there are no statements from his commander reporting his mental health condition had impaired his ability to reasonably perform his military duties in accordance with his office, grade, rank, or rating while he was on active-duty. Moreover, the applicant met accession and medical standards and was able to successfully transfer to the AFR. These events signify he was fit for duty at the time he was discharged from active-duty service and entered into the AFR. As discussed previously, the applicant decompensated quickly after he entered the AFR, most likely in response to a significant change in his environment. Thus, he also did not meet the criteria for a medical discharge or retirement for his active-duty service time.

For awareness, since the applicant has been service-connected from the DVA: The military's Disability Evaluation System, 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.

Liberal consideration is not applied to the applicant's request for a medical disability 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. Therefore, liberal consideration is not applied to his petition. The updated clarifying guidance also instructs a bifurcated review should be performed when a mental health condition such as PTSD or TBI potentially contributed to the circumstances of a discharge or dismissal to determine whether an upgrade to the discharge or a change in the narrative reason is appropriate. Since the applicant already received an honorable character of service from his Regular Air Force and AFR service, a bifurcated review is not necessary or required.

The complete advisory opinion is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 5 Mar 25 for comment (Exhibit D), and the applicant replied on 12 Mar 25. In his response, the applicant contends whereas letters and records from two military psychiatrists dated 4 Nov 02, 6 Nov 02, and 21 Nov 02 all agree that his chronic disability (Schizophrenia, Undifferentiated Type) was incurred while he was entitled to [active-duty] basic pay; and, whereas the disability is at least 30 percent under the standard schedule of rating disabilities in use by the DVA at the time of the determination, and the disability is the proximate result of performing active-duty, and, whereas the disability was incurred in line of duty after 14 Sep 78, and this disability rendered him unfit to perform the duties of his grade and rank, more clearly realized as the cause of his career termination in his immediate Reserve service; and, whereas he was found unfit for duty due to his disability, thereby eclipsing his Air Force career due to an illness. Everyone agrees he incurred it on active-duty, it is a grave injustice not to retire him from active-duty given the clear linkage is evident.

Per the applicant, the effects of his disability onset were experienced the previous year before his separation from active-duty, when he was placed in the Chief, Distance Learning position, a captain's billet though he was a major, due to his mental inability to complete his professional military education making him unfit to perform duties of his grade and rank.

The applicant appeals to the Board to recognize his entitlement to an active-duty medical retirement given his chronic disability making him unfit for service in his grade and rank on or about 6 Jan 01, when he was assigned as Chief, Distance Learning, while he was entitled to basic pay and based upon accepted medical principles, that the disability is of a permanent nature and given that the disability was incurred in the line of duty after 14 Sep 78.

The applicant's complete response is at Exhibit E.

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 10 USC § 1552 and Department of the Air Force Instruction (DAFI) 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, to include the applicant's rebuttal, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant's medical records reflect symptoms of his mental health condition were apparent during his active-duty service with the Regular Air Force, prior to his appointment with the AFR, supporting a finding of EPTS -LOD Not Applicable. The Board found no service-aggravation due to the short period of service with the AFR prior to the applicant's hospitalization. Furthermore, there was no evidence the applicant was ever placed on a duty limiting condition profile for his mental health condition or he was deemed not worldwide qualified due to his mental health condition while serving with the Regular Air Force. Additionally, there are no statements from the applicant's commander reporting his mental health condition impaired his ability to reasonably perform his military duties in accordance with his office, grade, rank, or rating while he was on active-duty. Liberal consideration was not applied in accordance with the Vazirani Memorandum. Therefore, the Board recommends against correcting the applicant's records.

4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

RECOMMENDATION

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

CERTIFICATION

The following quorum of the Board, as defined in DAFI 36-2603, paragraph 2.1, considered Docket Number BC-2024-03039 in Executive Session on 6 Jun 25:

, Panel Chair
, Panel Member
, Panel Member

All members voted against correcting the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 26 Aug 24.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, AFRBA Psychological Advisor, dated 3 Mar 25.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 5 Mar 25.
Exhibit E: Applicant's Response, dated 12 Mar 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.

X

Board Operations Manager, AFBCMR