



his separation, thus, rendering his discharge inappropriate. However, on 6 Jul 87, the Board considered and denied his request for reconsideration, indicating the new evidence provided by the applicant was insufficient to cause the Board to reverse its previous determination. For an accounting of the facts and circumstances surrounding the applicant's request, and the rationale of the earlier decision by the Board, see the Record of Proceedings at Exhibit H.

On 12 Oct 95, by virtue of a DD Form 149, with attachments, the applicant requested that his narrative reason for separation, as reflected on his DD Form 214, *Certificate of Release or Discharge from Active Duty*, be changed to reflect that he was retired for reasons of physical disability rather than for a personality disorder (AFBCMR Docket Number BC-1996-00399). The applicant contended the Department of Veterans Affairs (DVA) had determined his discharge should have been medical in nature and granted him service connection for his Dysthymia. On 23 Jan 97, the Board considered and denied his request, noting the applicant underwent a mental health examination prior to his separation and there was no indication of any medical problems or restrictions which would warrant medical disability; the reason for the discharge was fully documented in the records and it was established that no error or injustice occurred. For an accounting of the facts and circumstances surrounding the applicant's request, and the rationale of the earlier decision by the Board, see the Record of Proceedings at Exhibit I.

By virtue of DD Form 149, *Application for Correction of Military Record*, dated 15 Feb 2011, with attachments, the applicant again requests reconsideration of his request and, through Counsel, makes the following contentions:

1. A 2007 General Accountability Office (GAO) Report warrants new due process in the applicant's case. It is the equitable practice of all Discharge Review Boards (DRBs) and Boards for Correction on Military Records (BCMRs) to consider retroactive application of favorable due process safeguards.
2. During the applicant's two tours in Vietnam he was exposed to enemy artillery and rocket attacks, the death of buddies, and a close friend. The DVA determined the applicant's delayed onset PTSD and major depression were service-connected and rated at 50 percent.
3. With respect to the applicant's discharge, the personality disorder diagnosis did not examine the co-morbidity of PTSD and related mental illness of depression. This should have been considered since his prior 13 years of service did not support a persistent history of personality disorder type behavior.

4. He provides an Army Board for Correction of Military Records (ABCMR) case where an experienced combat veteran was discharged for personality disorder. However, the ABCMR determined the member was misdiagnosed and later discredited the personality disorder diagnosis and correctly recognized the member's condition as delayed onset of combat-related PTSD.

5. Dr. A provides a separate opinion in the applicant's case, concluding the applicant does not have a personality disorder, and never had a personality disorder. Dr. A. states that PTSD presents initially with symptoms of anxiety and or depression and the probable onset of the applicant's PTSD was in 1983. The applicant's symptoms and conflicts with others first appeared in 1983 and were not the result of adjustment disorder but rather the onset of a psychiatric illness which became increasingly severe over time.

6. The Air Force diagnosed the applicant with personality traits disturbance under DSM-II in 1984 and not the long-term pattern disturbance. The Air Force never explored co-morbidity in the case as the DVA has, such as major depression and PTSD, from combat trauma to reconcile the contradictions in the applicant's long exemplary career. DoD Directive 1332.14, states that for members facing discharge due to personality disorder who served in a combat zone the diagnosis must address PTSD or other mental illness co-morbidity.

In support of his request, the applicant, through his counsel, submits an expanded statement, a newspaper article describing improvements made for disability ratings, several DVA Rating Decisions, extracts from his medical records, GAO Report GAO-10-1013T, *Defense Health Care, Status of Efforts to Address Lack of Compliance with Personality Disorder Separation Requirements*, GAO Report GAO-09-31, *Defense Health Care, Additional Efforts needed to Ensure Compliance with Personality Disorder Separation Requirements*, an article entitled *Personality Disorders - Brief Historical Review*, Department of the Army Record of Proceedings, Medical Report from Dr. A, articles on Adjustment Disorder and Personality Disorders, extracts from the applicant's military personnel records and other documents related to his request.

The applicant's complete submission, with attachments, is at Exhibit J.

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AIR FORCE EVALUATION:

The AFBCMR Medical Consultant recommends denial, indicating the applicant has not met the burden of proof of a material error or injustice. First, it is important to note that the delayed establishment of service connection for a new clinical diagnosis by the DVA does not automatically infer that it was an unfitting condition at the time of release from military service. The

Military Disability Evaluation System, established to maintain a fit and vital fighting force, can by law, under Title 10, United States Code (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 future occurrences. For an individual to be considered *unfit* for continued military service there must be a medical condition that prevents or interferes with the performance of duties commensurate with office, grade, rank, and rating; or which may preclude worldwide qualification for military duties. Additionally, the condition could be disqualifying under AFR 35-4 (forerunner of today's AFI 48-123, *Medical Examination and Standards*). However, in the applicant's case, he was administratively discharged under provisions of AFR 39-10 (forerunner of today's AFI 36-3208, *Administrative Separation of Airmen*) for a mental disorder that was considered *unseating* for military service and did not render him eligible for processing as a medical discharge. Department of Defense Instruction 1332.38 lists *Conditions and Circumstances Not Constituting a Disability* and these conditions include *Personality Disorders* and *Adjustment Disorders*. The mere fact that the nomenclature assigned to the applicant's mental status has changed over several decades, as disclosed at his July 2002 DVA Compensation & Pension examination, does not invalidate the accuracy of the diagnosis that resulted in his separation; a time during which the applicant also desired to return to duty, as defended in his 14 Apr 86 statements associated with his initial request to be reinstated to active duty. Simply put, his PTSD was neither diagnosable nor showed evidence of being an unfitting condition at the time of the applicant's separation; and thus should be not now be determined as the alternative cause for his separation. Although, over time, the applicant has reported signs and symptoms attributed to his service in Vietnam and has achieved a delayed diagnosis of PTSD, it is not proof that it was either diagnosable or unfitting at the time of his release from military service. Under Title 38, USC, 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, narrative reason for separation, or the intervening period since the date of separation. With this in mind, the DVA is authorized to award compensation ratings for conditions that were not unfitting during military service at the time of separation, such as the case with the applicant's PTSD. This is

the reason why an individual can be released from military service for one reason and yet sometime thereafter receive a compensation rating from the DVA for a service-connected, but militarily nonunfitting condition.

The complete AFBCMR Medical Consultant's evaluation is at Exhibit G.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Counsel states the advisory opinion recommends denial of relief arguing that only the nomenclature assigned to the applicant's mental status has changed over the decades while the accuracy of the original diagnosis remains valid. However, this is merely a play on words and the original diagnosis is framed in a different way. The opinion never honestly addresses the question as to what medical condition the applicant was suffering. After avoiding Dr. A's analysis, the advisory opinion trots out the standard reply that it's not the DAV's job to determine military unfitness, but post-service civilian impairment. However, the medical opinions of DVA psychologists and psychiatrists are relevant on a limited forensic issue, that upon their review of military medical records from 1983 to 1984, the DVA found symptoms demonstrating not a personality disorder, but a psychiatric disability in service.

Although Dr. A found that adjustment disorder may have been appropriate in Nov 1983, by early 1984 (before discharge) the applicant was mentally ill with a significant psychiatric disorder. By 2001, the DVA chronicled a long history of PTSD with dysthymia and recurrent episodes of major depression disorder (MDD). Dr. A concludes the first MDD episode occurred in 1983 to 1984 while the applicant served on active duty. At a minimum, this establishes the applicant should have been assigned to the Temporary Disability Retirement List (TDRL) in 1984 for five years as unresolved PTSD manifested in the applicant. Moreover, in 1995 and 2001 the DVA found the applicant's military medical records demonstrated some form of a psychiatric disability. However, the advisory opinion is silent with respect to Dr. A's learned analysis and these DVA determinations. It simply says the unsuitable label assigned is controlling, as if the tail must wag the dog.

The advisory opinion does not dispute the applicant served in Vietnam and was repeatedly exposed to PTSD qualifying stressors. Nor does it dispute that later as a Combat Arms Maintenance Training Drill Master, the applicant's job was to maintain and fire weapons and recreate combat conditions to train security forces against air base attacks. There is no dispute the surrounding circumstances of the psychological examination for firearms access in 1983, and the altercation at a firing range over safety, and the applicant's perceived unresolved anger to

the safety and welfare of his isolated stateside family and spouse, who was a Vietnamese refugee.

During this time, the applicant was experiencing the early progression of PTSD manifested by intense but generalized psychological distress, anxiety and depression over life events, together with physiological bodily reactions, suicidal and homicidal intent, not full blown recurrent flashbacks and nightmares, and dissociation and psychoses. Instead, the advisory opinion demands a simplistic one-size-fits-all PTSD. This ignores the fact that PTSD is frequently a progressive disease, as in this case.

The advisory opinion admits the applicant experienced a delayed onset of PTSD, but it argues this is not proof that it was either diagnosable or unfitting at the time. This brings the opinion full circle back to the underlying medical mistake the applicant's condition was diagnosable with a personality disorder and separated for that reason.

However, when it comes to PTSD, an initial diagnosis of anxiety and or depression is frequently made; only after passage of time is the PTSD diagnosis evident. The probable onset of the applicant's PTSD was in 1983, and the initial symptoms were the beginning of major depression and PTSD. His symptoms were significant, but not sufficiently clear to diagnose PTSD. The major depression rendered the applicant unfit for continued military service and would likely qualify for a disability rating of 25-50 percent.

Furthermore, PTSD was not introduced until 1980 and remained controversial, with evolving acceptance and criteria. Consideration of this unique situation falls within the broader role of the AFBCMR to measure the injustice of a belated Vietnam-era PTSD diagnosis after growing institutional understanding and acceptance. According to Dr. A, delayed onset PTSD is often a progressive disease, but frequently it is initially diagnosed as anxiety and or depression and is only evident as PTSD after the passage of time. This is supported by the fact that PTSD is not limited to the common conscious reliving of the original traumatic event, but can include unconscious responses such as intense psychological distress or physiological reactivity.

The six year period from 1984 to 1991, the applicant suffered from major depression and his inability to maintain steady employment. The applicant's inability to maintain steady employment in addition to his depressive symptoms supported the finding of the DVA rating decision in Aug 1995. The Board of Veterans Appeals (BOVA) determined from the findings of acute situational depression and military job impairment, the applicant demonstrated some form of psychiatric disorder while he was in the service.

Counsel cites the 2009 Sabo v. United States case, a class-action suit settled by DOD allowing former members medically discharged from Dec 2002 to 2008 for PTSD, but awarded less than a 50 percent rating as applicable in the applicant's case. The suit alerted DOD to past military agency error in rating PTSD. As a result, in 2009, DOD began enforcing the overlooked federal regulation to award 50 percent for PTSD prior to discharge. Sabo v. United States is retroactive to Dec 2002, so the applicant's discharge date makes him ineligible as a class member of the settlement for PTSD ratings. Although not strictly eligible as a claimant for this court-sanctioned review, the underlying equitable issue remains before the AFBCMR.

The applicant is also similarly situated to an applicant to the ABCMR, a decorated Vietnam veteran, who subsequently became a drill instructor and was ultimately misdiagnosed with a personality disorder. The BCMR corrected his record to show that he suffered a delayed onset of PTSD.

Lastly, counsel states the applicant was an elite noncommissioned officer who served honorably and his records should be corrected to reflect the proper medical disability diagnosis with retirement.

The counsel's complete response is at Exhibit I.

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THE BOARD CONCLUDES THAT:

After reviewing this application and the evidence provided in support of his appeal, we remain unpersuaded the applicant's discharge should be changed to reflect that he was retired due to physical disability. After a thorough review of the documentation submitted in support of his most recent appeal, to include his response to the advisory opinion rendered in this case, we do not believe he has overcome the rationale expressed in our previous decision. In making such determination, we find the medical findings rendered at the time of final disposition, carry the most weight, as they were rendered by individuals closest to the situation at the time, with firsthand knowledge. In the applicant's case, the evidence of record reveals he experienced psychological stressors when faced with separation from his foreign born wife while on assignment. During this separation and as a result of several acts of misconduct, and concerns for his access to military firearms, the applicant was referred for mental health evaluation and was subsequently diagnosed with an adjustment disorder. We note that "Personality Disorder" was used to characterize all unsuiting mental health disorders on the DD Form 214 at the time of the applicant's discharge, even in cases such as his when the diagnosis was adjustment disorder, not personality disorder.



While we note the evidence of record reveals that subsequent to his discharge the applicant reported signs and symptoms that he attributed to his service in Vietnam and he has achieved a diagnosis of PTSD by the Department of Veteran Affairs, it is not proof that he manifested the clinical signs and symptoms the disorder nor was it unfitting at the time of his discharge from military service. Additionally, we note that although the Air Force is required to rate disabilities in accordance with the DVA Schedule for Rating Disabilities, the DVA operates under a totally separate system with a different statutory basis. In this respect, we note the DVA rates for any and all service-connected conditions, to the degree they interfere with future employability, without regard to is proven or demonstrated impact upon a service member's retainability, fitness to serve or narrative reason for release from military service; whereas, under Title 10 U.S.C, the Air Force rates a condition only when it has been determined unfitting for further military service; and then only to the degree present at the time of release from military service. We also note the comments and supporting statement by the applicant's civilian physician indicating his belief the applicant's current condition is attributable to his service in Vietnam. However, this statement, rendered many years after the fact, combined with the documentary evidence before us, is not sufficient for us to conclude that his post-traumatic stress disorder (PTSD) contributed to his misconduct or the diagnosis that precipitated his administrative discharge or that it serves to substantiate the applicant should be retired for physical disability. As such, we find action and disposition in the applicant's case to be in compliance with the Air Force regulations in effect at the time of his discharge. While we note Counsel's argument that a recent GAO Report recommends military members facing discharge for personality disorder be evaluated for post-traumatic stress disorder and the findings reviewed by the Surgeon General, we find no relevancy to his argument since the applicant was discharged over 25 year ago. Additionally, the GAO study along with the recommendation was conducted based on studies of soldiers who served in Afghanistan and Iraq and the findings along with the recommendations are not applied retroactively to every member who faced combat service. Moreover, we are unable to link the applicant's case, or relevancy thereof, to the 2009 *Sabo v. United States* case. As Counsel points out, the noted case is relevant to those who were discharged for physical disability because of their unfitting PTSD diagnosis. However, in view of the fact we have determined the applicant's discharge for his unsuiting condition was appropriate to the circumstances, the noted case has no applicability to the applicant's situation. Finally, Counsel contends the applicant is similarly situated to a former Army Soldier who successfully appealed for similar relief from the Army Board for Correction of Military Records (ABCMR). However, while the ABCMR found clear evidence of a diagnosis of combat fatigue associated with the Soldier's combat service in Vietnam, followed by several hospitalizations for psychiatric reasons, as well as a concerted effort by the Army in subsequent years to



find the right assignment and classification for the Soldier for the changes being exhibited in his personality, the applicant has shown no such causal relationship between his service in Vietnam in 1970 and his adjustment disorder diagnosis some 13 years later. In fact, contrary to the circumstances in the noted case, Counsel has argued that the applicant's service over the course of the years between his service in Vietnam and his adjustment disorder diagnosis was impeccable and has presented no evidence to indicate there were similar circumstances at play in the applicant's case. We note the statement provided by Dr. A. indicating that in his opinion the onset of the applicant's PTSD was in 1983 and was exacerbated over several years. However, the Air Force physicians who diagnosed the applicant with having a personality disorder were fully qualified professionals and determined upon examination the applicant in fact did suffer from adjustment disorder. In view of these facts and in the absence of evidence to the contrary, we are not inclined to substitute our judgment for that of responsible officials some twenty-eight (28) years after the event in question, especially since the evidence provided does not support that they were not qualified and failed to properly discharge their duties and properly handled the applicant's case. Counsel's many arguments are duly noted; however, we do not find these arguments and the documentation presented sufficient to convince us that competent authority should have found the applicant unfit for military service for PTSD at the time of his discharge. Therefore, we find no basis to recommend granting the relief sought in this application.

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THE BOARD DETERMINES THAT:

The applicant be notified the additional evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

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The following members of the Board considered AFBCMR Docket Numbers BC-1986-01455 and BC-1996-00399 in Executive Session on 6 Aug 12, under the provisions of AFI 36-2603:

- , Panel Chair
- , Member
- , Member

The following documentary evidence pertaining to AFBCMR Docket Numbers BC-1986-01455 and BC-1996-00399 was considered:

- Exhibit G. Record of Proceedings (ROP) (BC-1986-01455), undated.
- Exhibit H. Addendum to ROP (BC-1986-01455), dated 18 Aug 87.
- Exhibit I. ROP (BC-1996-00399), dated 3 Apr 97, w/atchs.
- Exhibit J. DD Form 149, dated 15 Feb 11, w/atchs.
- Exhibit K. Letter, AFBCMR Medical Consultant, dated 14 Nov 11.
- Exhibit L. Letter, SAF/MRBR, dated 18 Nov 11.
- Exhibit M. Letter, Counsel, dated 10 Dec 11, w/atchs.

Panel Chair