

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
ALDYKIEWICZ, WALKER, and PARKER
Appellate Military Judges

**In Re AV2,
Petitioner**

v.

**Colonel JOHN H. COOK,
Respondent**

and

**Master Sergeant CLINTON M. MURRAY,
Real Party in Interest**

ARMY MISC 20210409

ORDER

WHEREAS:

On 12 July 2021, petitioner filed a petition with this Court seeking extraordinary relief in the form of a writ of mandamus to the military judge presiding over a court-martial in which petitioner asserts a claim under Article 6b, Uniform Code of Military Justice, 10 U.S.C. § 806b.

Petitioner contends the military judge erred when he issued a ruling intending to release petitioner's Post Traumatic Stress Disorder (PTSD) questionnaire with redactions applied to only pages 4, 5, and 6 of the document. Petitioner claims release of any portion of the questionnaire is in violation of petitioner's rights because the entire document is privileged under Military Rule of Evidence [Mil. R. Evid.] 513. We disagree. Specifically, we find the military judge did not err when he found privilege under Mil. R. Evid. 513 only applied to the redacted portions of the document because: (1) the content on these pages constituted a clear "cut-and-paste" directly from petitioner's behavioral health records; and, (2) there was no evidence before the court that petitioner "waived her privilege of those redacted matters through voluntary disclosure."

Military Rule of Evidence 513 gives patients a privilege to prevent others "from disclosing a confidential communication made between the patient and a psychotherapist . . . if such communication was made for the purpose of facilitating diagnosis or treatment of the patient's mental or emotional condition." Mil. R. Evid. 513(a). As noted in the military judge's ruling, petitioner's PTSD questionnaire is an internal Veteran's Administration document used to assess claims for disability

benefits, and not for the purposes of treatment. We also take note of the military judge's observations that the form refers to petitioner as a "claimant" vice a "patient" and the document contains the disclaimer, "Please note that this questionnaire is for disability evaluation, not for treatment purposes."

Contrary to petitioner's assertion, we find the military judge's conclusions and ruling regarding petitioner's PTSD questionnaire to be within the sound discretion of the military judge. For these reasons, we agree communications made on the document were not for the purpose of facilitating treatment and that the military judge did not err by finding only the redacted portions of the form to be privileged under Mil. R. Evid. 513.

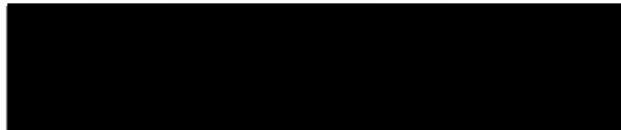
Under the totality of the circumstances, we conclude the petitioner has failed to demonstrate a clear and indisputable right to the writ she seeks. *See Hasan v. Gross*, 71 M.J. 416, 418 (2012) (citing *Cheney v. United States Dist. Court for D.C.*, 542 U.S. 367, 380-81 (2004)).

NOW THEREFORE, IT IS ORDERED:

Petitioner's request for extraordinary relief is DENIED.

DATE: 23 September 2021

FOR THE COURT:



MALCOLM H. SQUIRES, JR.
Clerk of Court

CF: JALS-DA
JALS-GA
JALS-CCR
JALS-CCZ
JALS-CR4
Petitioner
Respondent