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## UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

### SECOND ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-1985-03929-3

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COUNSEL: Work-Product

HEARING REQUESTED: NO

### APPLICANT'S REQUEST

The Board reconsider his request for upgrade of his general (under honorable conditions) discharge to honorable and change of his narrative reason for separation.

### RESUME OF THE CASE

The applicant is a former Air Force airman (E-2) who was discharged with a general (under honorable conditions) service characterization on 4 Aug 82 for misconduct – frequent involvement of a discreditable nature.

On 31 May 85, the Board considered and denied his request to upgrade his discharge to honorable and to change his reentry (RE) code; finding insufficient evidence demonstrating an error or injustice. The Board took note of the applicant's evidence; however, it agreed and adopted the opinions and recommendations of the Air Force Military Personnel Center (AFMPC), finding the applicant's pattern of misconduct justified the discharge.

On 8 Jul 04, the Board reconsidered and denied his request to change his narrative reason for separation; finding insufficient evidence demonstrating an error or injustice. The Board found the discharge was in compliance with the governing manual and found no evidence the discharge was inappropriate; therefore, the Board was not persuaded to change the narrative reason.

For an accounting of the applicant's previous requests and the rationale of these decisions, see the AFBCMR Letters and Record of Proceedings at Exhibits E and G.

On 11 Apr 24, the applicant requested reconsideration of his request to upgrade his discharge to honorable and change his narrative reason for separation. He contends he wrote one bad check, which he paid, and he gained a little weight, so his commander discharged him, which was wrong. He did not receive any financial training or the opportunity to correct his mistakes. In a supplemental application, dated 17 Aug 24, he contended he suffered from a traumatic brain injury (TBI) after a motorcycle accident, which was undiagnosed at the time in 1977. In support of his

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reconsideration request, the applicant submitted the following new evidence: (1) medical exam notes.

The applicant's complete submission is at Exhibit H.

## **POST-SERVICE INFORMATION**

On 5 Aug 24, the Board sent the applicant a request for post-service information, including a standard criminal history report from the Federal Bureau of Investigation (FBI); however, he has not replied.

## **APPLICABLE AUTHORITY/GUIDANCE**

On 3 Sep 14, the Secretary of Defense issued a memorandum providing guidance to the Military Department Boards for Correction of Military/Naval Records as they carefully consider each petition regarding discharge upgrade requests by veterans claiming PTSD. In addition, time limits to reconsider decisions will be liberally waived for applications covered by this guidance.

On 25 Aug 17, the Under Secretary of Defense for Personnel and Readiness (USD P&R) issued clarifying guidance 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, 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 that 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 25 Jul 18, the Under Secretary of Defense for Personnel and Readiness issued supplemental guidance, known as the Wilkie Memo, to military corrections boards in determining whether relief is warranted based on equity, injustice, or clemency. These standards authorize the board to grant

relief in order to ensure fundamental fairness. Clemency refers to relief specifically granted from a criminal sentence and is a part of the broad authority Boards have to ensure fundamental fairness. This guidance applies to more than clemency from sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds. This guidance does not mandate relief but rather provides standards and principles to guide Boards in application of their equitable relief authority. Each case will be assessed on its own merits. The relative weight of each principle and whether the principle supports relief in a particular case, are within the sound discretion of each Board. In determining whether to grant relief on the basis of equity, an injustice, or clemency grounds, the Board should refer to paragraphs 6 and 7 of the Wilkie Memo.

On 10 Mar 25, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit J).

### **AIR FORCE EVALUATION**

The AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request for the desired changes to his records from a mental health perspective. This mental health advisory is limited to the applicant's mental health condition. The Psychological Advisor will discuss his TBI as a psychiatric/mental health condition.

The Psychological Advisor has reviewed the available records and finds there is no evidence or records the applicant had any complications from a pre-existing injury during service which would affect his overall functioning and behavior. He was involved in a motorcycle accident in 1977 when he was 15 years old and sustained facial fractures to his mandible (jaw) and nose, necessitating surgery. There were no reports he actually sustained a TBI, was diagnosed with a TBI or other cognitive disorders, had a loss of consciousness (he reported he was not knocked out); had an altered state of mental status or experienced any TBI-related symptoms such as headaches, dizziness, confusion, vomiting, fatigue, blurred vision, memory impairment, speech problems, or other changes in his behavior following his motorcycle accident. His motorcycle accident and injuries occurred before or existed prior to his service (EPTS). When he entered the military, there was no evidence he had any residual effects from his accident including any cognitive impairment issues. This statement is supported by his separation physical examination reporting he made a full recovery from his fractured nose and mandible from the motorcycle accident. During this same exam, he was also assessed to have no neurological or psychiatric issues and in fact, he denied experiencing a head injury, dizziness or fainting spells, frequent or severe headaches, periods of unconsciousness, loss of memory or amnesia, frequent trouble sleeping, depression or excessive worry, and nervous trouble of any sort. There is no evidence or records he received any mental health treatment or mental disorder diagnosis during service or in his lifetime. There were no records that he received any treatment for a TBI during service as well. The applicant submitted his post-service treatment records reflecting he received two Magnetic Resonance Imaging (MRI) examinations, 39 and 42 years after his discharge from the Air Force. The results of these MRIs did not produce a diagnosis of a TBI. He did endorse having cognitive deficits over one year and dizziness and this appeared to have occurred after his military service.

These records did not clearly discuss the cause of his cognitive issues, but it did report he had extensive, confluent areas of T2 prolongation in the hemispheric white matter, bilaterally consistent with advanced chronic small vessel ischemic disease, which is commonly caused by aging. This issue was not caused by his alleged TBI as he contended. As mentioned, his injuries from his motorcycle accident were EPTS, and no evidence his military service permanently aggravated his prior service condition and injuries. There is no evidence he had an undiagnosed TBI during service.

Since there is no evidence of any mental health condition, there would also be no evidence his mental health condition caused his discharge from service. The applicant was discharged from service for misconduct, consisting of numerous instances of financial irresponsibility (issuing 38 checks with insufficient funds), leaving his line badge at home, leaving the squadron without being escorted, being late to work for the fourth time in five weeks, having a verbal confrontation with a superior non-commissioned officer (NCO), engaging in a physical confrontation with one of his fellow co-workers, failing to go at the prescribed time to his appointed place of duty, having a verbal confrontation with his supervisor, being disrespectful in language towards a superior NCO, being absent from his duty section for excessive periods of time without authority, being disrespectful toward a supervisor NCO who was in charge of the dormitory and being absent from his assigned weekend standby duty. He addressed two of his incidents of misconduct. He reported he informed the NCO he was going to cash his paycheck during lunch and needed extra time and the NCO did not seem to have a problem with the information presented. He claimed the amount of time he was away from his duty section was the same amount the NCO was aware of and had no issues with. His explanation did not demonstrate his absence from his duty section for an extended period of time was caused by his alleged TBI or mental health condition. For his other incident of engaging in a verbal confrontation with an NCO, he admitted to the incident, but explained he was upset with the NCO for yelling at him to report to work when he was at sick call and for not caring about his well-being. His reaction was caused by not feeling well and not receiving compassion or care from his supervisor. However, his emotional and verbal outbursts were not caused by his supposed TBI but by his stressful circumstances of not feeling well and perceiving he was unsupported by his NCO. The applicant did not address his remaining numerous acts of misconduct during service, but his leadership documented he was embarrassed by his financial situation and hoped the problem would work itself out. He gave no answer when asked why he did not check in to his duty section after he met with a chaplain and stated he overslept as the reason he was late for duty. None of these explanations demonstrate they were caused by a TBI or having a mental health condition. He claimed he was offered no financial counseling training for his financial issues and this claim is disputed by his military records. The evaluation officer's (EO) evaluation report dated 14 Jul 82 shows he accepted the offered assistance to straighten out his finances. For his remaining misconduct, which was not addressed by him or his leadership, there is no evidence his alleged TBI, or mental health condition caused the misconduct. There is no evidence or records he had any neurocognitive impairment issues from a TBI such as memory issues, poor concentration, poor problem-solving abilities, and poor decision-making skills causing any of his misconduct resulting in his discharge. There is also no evidence he had a mental health condition impairing his judgment at the time of any of his misconduct. He

exercised poor judgment which was not caused by having a mental health condition, but most likely caused by conduct problems and immaturity as observed by the EO.

Liberal consideration is applied to the applicant's petition due to his contention of a TBI. The following are responses to the four questions from the Kurta Memorandum from the available records for review:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?

The applicant contended he suffered from a TBI after a motorcycle accident where his nose and jaw were broken after hitting a culvert and being thrown headfirst into a pine tree. He reported his TBI was undiagnosed at the time and identified the year 1977. He claimed he recently had a new MRI which showed some TBI and submitted copies of his MRI records. He did not clearly explain how his TBI may excuse or mitigate his discharge.

2. Did the condition exist or experience occur during military service?

There is no evidence or records the applicant sustained a TBI during his military service. He fractured his jaw and nose in a motorcycle accident in 1977, which occurred before his military service. There is no evidence or records the applicant was ever diagnosed with a TBI or a cognitive disorder sustained during service or in his lifetime or he had undiagnosed TBI during service. He received a separation physical examination from his primary care manager (PCM) and his neurologic and psychiatric clinical evaluation were assessed to be "normal." His PCM noted he had made a full recovery from his jaw and nose fractures sustained from his prior service motorcycle accident. He denied during this examination having any head injury, dizziness or fainting spells, frequent or severe headaches, frequent trouble sleeping, depression or excessive worry, loss of memory or amnesia, nervous trouble of any sort, and periods of unconsciousness. His PCM also noted he had no serious psychiatric or psychiatric behavior disorder. The post-service treatment records he submitted for review did not report he was diagnosed with a TBI but rather, he had "extensive, confluent areas of T2 prolongation in the hemispheric white matter bilaterally consistent with advanced chronic small vessel ischemic disease," which is commonly associated with aging. This record did not state this finding was caused by his motorcycle accident.

3. Does the condition or experience excuse or mitigate the discharge?

There is no evidence the applicant's alleged TBI from a prior service motorcycle accident was aggravated by his military service. There is no evidence his alleged TBI, or mental health condition had a direct impact or caused any of his misconduct, resulting in his discharge from service. There is no evidence he had complications from an alleged EPTS TBI or mental health condition impairing his judgment at the time of any of his misconduct. Thus, his alleged TBI or mental health condition does not excuse or mitigate the discharge.

4. Does the condition or experience outweigh the discharge?

Since his alleged TBI or mental health condition does not excuse or mitigate his discharge, his alleged TBI or mental health condition also does not outweigh his original discharge.

The complete advisory opinion is at Exhibit K.

## APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 19 Mar 25 for comment (Exhibit L) but has received no response.

## FINDINGS AND CONCLUSION

1. The application was timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board remains unconvinced the evidence presented demonstrates 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 Board applied liberal consideration due to his contention of a TBI and finds no evidence his alleged TBI mitigated or excused his misconduct. The Board finds no evidence or records the applicant had any complications from a pre-existing injury during service which would affect his overall functioning and behavior. There were also no reports he actually sustained a TBI. There was also no evidence he was diagnosed with a TBI or any cognitive disorders, was treated for TBI, or experienced any TBI-related symptoms. Furthermore, during his separation examination, he denied any symptoms related to a TBI and was assessed to have no neurological or psychiatric issues by the PCM. There is no evidence his alleged TBI, or any other mental health condition had a direct impact or caused any of his misconduct and subsequent discharge. Since the Board does not find his contended TBI excuses or mitigates his discharge, the Board does not find his TBI outweighs his discharge. It appears the discharge was consistent with the substantive requirement of the discharge regulation and was within the commander's discretion. The Board considered upgrading the applicant's discharge on the basis of clemency; however, finds insufficient evidence to warrant upgrade of his discharge or change of his narrative reason for separation on the basis of clemency. 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-1985-03929-3 in Executive Session on 26 Jun 25:

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Work-Product Panel Chair

Work-Product, Panel Member

Work-Product, Panel Member

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

Exhibit E: Record of Proceedings, w/ Exhibits A-D, dated 15 Jan 86.

Exhibit G: Record of Proceedings, w/ Exhibit F, dated 28 Jul 04

Exhibit H: Application, DD Form 149, w/atchs, dated 11 Apr 24.

Exhibit I: Letter, SAF MRBC (FBI Bulletin with Clemency and Fundamental Fairness Guidance), dated 5 Aug 24

Exhibit J: Letter, SAF MRBC (Liberal Consideration and Clemency), dated 10 Mar 25

Exhibit K: Advisory Opinion, AFRBA Psychological Advisor, dated 12 Mar 25.

Exhibit L: Notification of Advisory, SAF/MRBC to Applicant, dated 19 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.

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Board Operations Manager, AFBCMR

Signed by: USAF

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