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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-1996-01906-2

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COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

The Board reconsider her request her under other than honorable conditions (UOTHC) discharge be upgraded to honorable.

RESUME OF THE CASE

The applicant is a former Air Force captain (O-3).

On 13 Nov 89, the applicant received a letter of counseling (LOC) for involvement in the manipulation of a controlled substance, fentanyl, by co-signing an incorrect entry to cover up the loss and denying it happened.

The report of investigation (ROI) dated 23 Jan 91 shows the applicant on 14 Dec 90 stole a pair of pants and a sweater from the base exchange, total value of less than \$100. Court-martial charges were preferred for the theft.

On 17, 20 and 26 Dec 90, the applicant underwent a command directed mental health evaluation (CDMHE). She was told the report would be submitted to her commander and that it likely would be used in making a decision regarding disciplinary actions. The applicant reported she was stationed at Dyess Air Force Base, Texas from 1986 to 1989. She married her spouse in Jun 88 and they arrived at Misawa Air Base, Japan in Feb 89. She was constantly thinking about Operation DESERT SHIELD and was opposed to fighting. She reported she was depressed about her grandmother's health and that her 19 year old daughter had tried to kill herself. In Mar 90, she was prescribed Prozac for the depression. She reported the drug made her hyper and nervous. The applicant was diagnosed with Adjustment Disorder with Depression. The mental health evaluators found the applicant at the time of her misconduct was free from any mental disease and able to distinguish right from wrong.

On 23 Jan 91, the applicant tendered her resignation in lieu of court-martial.

AFBCMR Docket Number BC-1996-01906-2

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On 25 Feb 91, the staff judge advocate recommended the applicant's resignation be accepted and she be discharged with a UOTHHC.

On 26 Mar 91, the Secretary of the Air Force accepted the applicant's resignation and directed she be discharged with a UOTHHC.

On 8 Apr 91, the applicant was discharged with a UOTHHC, narrative reason for separation of "Voluntary resignation conduct triable by or in lieu of court-martial" and corresponding separation code "DFS." She was credited with 4 years, 7 months and 27 days of active duty service.

On 21 May 96, the Air Force Discharge Review Board (AFDRB) denied the applicant's request for upgrade of her discharge. The applicant contended while anticipating being deployed to Saudi Arabia, she was prescribed Prozac due to her severe depression. Her behavior became irrational and impulsive and she did not know what she was doing due to the medication. The AFDRB concluded the discharge was consistent with the procedural requirements and within the commander's discretion. There was no legal error to change the discharge,

On 23 Jan 97, the Board considered and denied her request for upgrade of her discharge. The Board agreed with the AFDRB's findings the applicant engaged in serious misconduct and her service was not honorable.

For an accounting of the applicant's original request and the rationale of the earlier decision, see the AFBCMR Letter and Record of Proceedings at Exhibit E.

On 15 Aug 24, the applicant requested reconsideration of her request. On 3 Mar 25, she submitted a corrected DD Form 149, *Application for Correction of Military Record*, stating she was sexually abused at Dyess AFB by the chief nurse and the colonel (O-6). She suffered a psychotic breakdown and was told to deny it. She cannot get the post-traumatic stress disorder (PTSD) out of her mind. She is unbelievably stressed to the point she has had three stress induced heart attacks.

The applicant's complete submission is at Exhibit E.

POST-SERVICE INFORMATION

On 12 May 25, the Board staff sent the applicant a request for post-service information and advised the applicant she should provide a Federal Bureau of Investigation (FBI) Identity History Summary Check, which would indicate whether or not she had an arrest record. As of this date, the applicant 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, Traumatic Brain Injury (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 12 May 25, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit I).

Department of the Air Force Instruction (DAFI) 36-3211, *Military Separations*, describes the authorized service characterizations.

Honorable. The quality of the airman's service generally has met Department of the Air Force standards of acceptable conduct and performance of duty or when a member's service is otherwise so meritorious that any other characterization would be inappropriate.

General (Under Honorable Conditions). If an airman's service has been honest and faithful, this characterization is warranted when significant negative aspects of the airman's conduct or performance of duty outweigh positive aspects of the member's military record.

Under Other than Honorable Conditions. This characterization is used when basing the reason for separation on a pattern of behavior or one or more acts or omissions that constitute a significant departure from the conduct expected of members. The member must have an opportunity for a hearing by an administrative discharge board or request discharge in lieu of trial by court-martial. Examples of such behavior, acts, or omissions include but are not limited to:

- The use of force or violence to produce serious bodily injury or death.
- Abuse of a special position of trust.
- Disregard by a superior of customary superior - subordinate relationships.
- Acts or omissions that endanger the security of the United States.
- Acts or omissions that endanger the health and welfare of other members of the DAF.
- Deliberate acts or omissions that seriously endanger the health and safety of other persons.
- Rape, sexual assault, aggravated sexual contact, abusive sexual contact, rape of a child, sexual abuse of a child, sexual harassment, and attempts to commit these offenses.

AIR FORCE EVALUATION

AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request for an upgrade of her discharge.

There are no available mental health records. Following the theft of the pants and sweater, the applicant underwent a CDMHE on 26 Dec 90. The evaluator determined she wanted to get caught stealing so that she would not deploy to Saudi Arabia. The examiner also determined she was free from any mental disease and knew right from wrong at the time of her misconduct and could refrain from the wrong.

After discharge, the applicant applied to the AFDRB (1996, five years after discharge) for an upgrade and was denied. Her reasons at this time were stress, side effects from Prozac, the possibility of deployment to Saudi Arabia, and psychosis. The Board rejected all these reasons. They noted she had stopped Prozac before her misconduct and that the CDMHE evaluator determined she had no mental health defect which would reduce her capacity to understand the illegality or impropriety of her actions. This explanation also rules out psychosis. She did not raise

the contention of sexual assault, even though the threat of retaliation no longer existed, as she was already discharged from the military. This leaves her concern about deployment as the reason for her misconduct, which was determined during her CDMHE.

One year later (1997, six years after discharge), the applicant applied to the AFBCMR, contending her misconduct was the result of side effects of her medication (Prozac). She was again denied an upgrade. As noted above, it was determined she had no mental health defect which would reduce her capacity to understand the illegality or impropriety of her actions, and she had stopped taking her medication at the time of her misconduct. Again, she did not raise the contention of a sexual assault, despite her request for an upgrade occurring after her military discharge, when she would be free from threats or retaliation.

The applicant is currently contending (33 years after her military discharge) she was sexually assaulted and threatened while in the military. While the contention of MST can be sufficient in determining mitigation, in this case, there is insufficient evidence to substantiate her allegation, even with applying Liberal Consideration. Accordingly, an upgrade from a behavioral health standpoint is not supported. This Psychological Advisor concludes there are no mental health conditions/experiences that would mitigate or excuse her misconduct.

After considering the entire record and contentions, there is insufficient evidence to suggest the applicant had any mental health condition or experience that would mitigate her misconduct. A review of the available records finds no error or injustice with the applicant's discharge, and insufficient evidence has been presented to support the applicant's request.

Liberal consideration is applied to the applicant's petition due to the contention of a mental health condition. The following are responses to the four questions from the Kurta Memo based on information presented in the records:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge? The applicant check marked "Sexual Assault/Harassment" on her application. The applicant contends she experienced an MST.
2. Did the condition exist or experience occur during military service? There is insufficient evidence to support the applicant's contention. Following the theft of the pants and sweater, the applicant underwent a CDMHE on 26 Dec 90. The evaluator determined she wanted to get caught stealing so that she would not deploy to Saudi Arabia. The examiner also determined she was free from any mental disease and knew right from wrong at the time of her misconduct and could refrain from the wrong. After discharge, the applicant applied to the AFDRB (1996, 5 years after discharge) for an upgrade and was denied. Her reasons at this time were stress, side effects from Prozac, the possibility of deployment to Saudi Arabia and psychosis. The Board rejected all these reasons. They noted she had stopped Prozac before her misconduct and that the CDMHE evaluator determined she had no mental health defect which would reduce her capacity to understand the illegality or impropriety of her actions. This explanation also rules out psychosis (which her mental

health record does not support). She did not raise the contention of sexual assault, even though the threat of retaliation no longer existed, as she was already discharged from the military. This leaves her concern about deployment as the reason for her misconduct, which was determined during her CDMHE.

One year later (1997, 6 years after discharge), the applicant applied to the AFBCMR for upgrade of her discharge, contending her misconduct was the result of side effects of her medication (Prozac). She was again denied an upgrade. As noted above, it was determined she had no mental health defect which would reduce her capacity to understand the illegality or impropriety of her actions, and she had stopped taking her medication at the time of her misconduct. Again, she did not raise the contention of a sexual assault, despite her request for an upgrade occurring after her military discharge, when she would be free from threats or retaliation. The applicant is currently contending (33 years after her military discharge) that she was sexually assaulted and threatened while in the military.

3. Does the condition or experience excuse or mitigate the discharge? While the contention of MST can be sufficient in determining mitigation, in this case, there is insufficient evidence to substantiate her allegation, even with applying Liberal Consideration. Accordingly, an upgrade from a behavioral health standpoint is not supported. This Psychological Advisor concludes there are no mental health conditions/experiences that would mitigate or excuse her misconduct.
4. Does the condition or experience outweigh the discharge? Since the applicant's mental health condition does not excuse or mitigate her discharge, the applicant's condition also does not outweigh the original discharge.

The complete advisory opinion is at Exhibit H.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 12 May 25 for comment (Exhibit I) 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 to the applicant's request due to her contention of PTSD due to MST. The Board does not dispute her contention of MST; however,

there is no evidence the applicant had the symptoms or was diagnosed with PTSD due to MST while in service. The Board acknowledges the applicant was seen in the mental health clinic and received a CDMHE on 26 Dec 90. However, it appears the applicant was referred for a CDMHE following her misconduct of theft and that the information would likely be used in making a decision regarding disciplinary actions. The mental health evaluator attributed the applicant's misconduct of theft to avoid deploying to Saudi Arabia and it was noted she had previously stopped taking Prozac, which was prescribed for depression due to her grandmother's recent death, her daughter's attempted suicide and a LOC for loss of narcotics. Further, the mental health provider noted the applicant was free from any mental disorder. The Board found no evidence the applicant's MST or any mental health condition, to include PTSD, had a direct impact, nexus or potentially contributed to the circumstances of her UOTHC discharge. Since the Board finds the applicant's mental health condition/MST does not mitigate or excuse her misconduct, the Board finds her mental health condition, to include PTSD, due to MST does not outweigh her original discharge. Moreover, the applicant's records reflect she submitted her resignation in lieu of court martial and understood she would be discharged with a UOTHC in lieu of a court martial. The Board finds insufficient evidence the applicant's discharge was contrary with the substantive requirements of the discharge regulation. The Board considered upgrading the applicant's discharge on the basis of fundamental fairness and clemency; however, there was insufficient post-service evidence to warrant granting relief. 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 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-1996-01906-2 in Executive Session on 13 Aug 25:

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 23 Jan 97.

Exhibit F: Application, DD Form 149, w/atchs, dated DD MMM YY.15 Aug 24.

AFBCMR Docket Number BC-1996-01906-2

- Exhibit G: Documentary evidence, including relevant excerpts from official records.
Exhibit H: Advisory Opinion, AFRBA Psychological Advisor, dated 5 May 25.
Exhibit I: Notification of Advisory, SAF/MRBC to Applicant, w/Liberal Consideration and Clemency Guidance, dated 12 May 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.

8/29/2025

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Board Operations Manager, AFBCMR
Signed by: USAF

AFBCMR Docket Number BC-1996-01906-2