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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-2002-01800-3

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COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT’S REQUEST

Reconsideration be given to correct his DD Form 214, *Certificate of Release or Discharge from Active Duty*, to reflect an honorable character of service and a medical narrative reason for separation.

RESUME OF THE CASE

The applicant is a former Air Force airman first class (E-3).

On 18 Dec 02, the Board considered and denied his request for the award of the Southwest Asia Service Medal (SWASM) and the Expert Marksmanship Ribbon [sic]; finding the applicant had provided insufficient evidence of an error or injustice to justify relief and the prior request was not timely submitted.

On 5 Jun 18, the Board reconsidered and denied his request for award of the SWASM and the Expert Marksmanship Ribbon [sic], even though the applicant contended his combat service records clearly indicate his service in Southwest Asia. In addition, the Board found the applicant did not provide any evidence in support of his request to change his discharge and noted and agreed with the rationale and recommendation of the AFBCMR Psychiatric Consultant to deny the desired change of discharge. He requested his general (under honorable conditions) discharge for misconduct be changed to an honorable medical discharge, contending he was lied to and was told “under honorable conditions” was an honorable discharge. He did nothing to deserve being unfairly treated.

For an accounting of the applicant’s original request and the rationale of the earlier decision, see the AFBCMR Letters and Records of Proceedings at Exhibits E and L.

On 7 Nov 22, the applicant requested reconsideration of his request to upgrade his general (under honorable conditions) discharge to honorable with a medical narrative reason for separation. He contends he sustained multiple physical and mental injuries while on active duty, has 100 percent service-connected disability, and was subjected to racist, hateful, and sexual harassment by members of his squadron. In support of his reconsideration request, the applicant submitted the

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following new evidence: (1) Personal Statement; (2) Bachelor of Science degree; (3) credit score; and (4) Department of Veterans Affairs (DVA) rating documentation.

The applicant's complete submission is at Exhibit M.

On 21 Feb 23, the AFBCMR request for post-service information was forwarded to the applicant for review and comment within 30 days. As of this date, no response has been received by this office (Exhibit N).

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 (USD P&R) issued supplemental guidance 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 Memorandum.

On 21 Feb 23, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit N).

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.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor completed a review of all newly submitted evidence and finds insufficient evidence to overturn the Board's previous decision from a mental health perspective. The applicant vaguely contends he sustained multiple mental injuries on duty while in the military and did not provide any other clarifying information about his injuries such as the specific mental health condition he incurred during service, when the condition occurred, and how his condition or injuries caused his behaviors and subsequent discharge from service. The applicant did not submit any compelling evidence to warrant granting his request for an upgrade of his discharge nor his desire for a medical discharge. He submitted extracted pages revealing he had received a 100 percent service-connected disability rating. These pages were ambiguous and did not contain any detailed information such as the condition(s) for which he had been service-connected and rated or how his condition(s) was connected to his service. A review of his DVA treatment records found his current psychiatrist reported he had been service-connected and rated at 100 percent for bipolar disorder. He was initially diagnosed with Bipolar I Disorder, Manic with Psychotic Features by his DVA psychiatrist on 17 Jan 17, over 20 years after discharge. There is no evidence or records he had bipolar disorder or symptoms of this condition such as a manic episode during service. It appeared from his DVA records he developed this condition after service. He was also given a diagnosis of Panic Disorder Without Agoraphobia, Adjustment Disorder with Mixed Anxiety and Depressed Mood, Depressive Disorder, Anxiety Disorder Not otherwise specified (NOS), Personality Disorder NOS with narcissistic, borderline, and histrionic features, Alcohol Dependence, Nicotine Dependence, Bipolar I Disorder, Manic with Psychotic Features, and Delusional Disorder by his DVA providers and were also developed and/or diagnosed years and decades after discharge. He was never diagnosed with any of these conditions during service and

no evidence any of these conditions had affected his functioning, behaviors, and misconduct during service.

Returning attention to his objective military records, there is no evidence his mental health condition had a direct impact or was a mitigating factor to his discharge. The applicant was discharged from service for engaging in minor disciplinary infractions. He submitted several statements to explain his behaviors at the time of service and attributed most of his misconducts to being young and having difficulties understanding his responsibilities as an airman. Other explanations he provided included it was a misunderstanding on his part for being late, his friend stopped him from driving the MHU-83, and he did not know he had to be to work at 0700 on a Saturday. None of these explanations provided demonstrated there was a nexus between his mental health condition and misconducts and no evidence he was experiencing emotional distress at the time of any of these misconducts. For his Article 15 for misusing his government credit card, he reported having personal and financial problems causing him to use his government credit card to pay for gas because he did not have the funds and decided to try the only card he had on him. Once he realized his mistake, he contacted American Express to inquire about how to pay for the bill and stated he should have informed his supervisor about the situation. He provided a different explanation to his DVA provider about this situation. He claimed he forgot his wallet but had cleared this ahead of his time with his supervisor. These reports were inconsistent. His service treatment records did indicate he had marital problems prior to this incident as he had presented to the emergency room several months prior for feeling depressed “over alleged mental torture by wife” and he had Family Advocacy Program (FAP) involvement for mutual spousal physical abuse. While it is acknowledged he had personal problems that may have caused his impaired judgment, his personal stressors may explain his misconduct but does not excuse his behaviors. He was able to pay the bill immediately when he received the bill and so his financial situation was not quite dire that he was unable to pay for this bill. It is inappropriate behavior to misuse government funds and this behavior could not be disregarded or excused. The applicant had received one Article 15, three Letters of Reprimands and five Records of Counseling during service resulting with his discharge and no compelling evidence has been presented to demonstrate his mental health condition may excuse or mitigate his discharge. Therefore, his request for an upgrade to honorable could not be supported.

The applicant contends he was subjected to racist, hateful, and sexual harassment by members of his squadron. Although it is possible, he may have experienced these situations, there is no evidence any these experiences were documented his military records. There is no evidence any of these experiences caused his misconduct and discharge as well. He denied to the DVA of having any history of emotional or sexual abuse and no documentation from the DVA of any sexual harassment experiences he endured during service. The applicant is also requesting a medical discharge. The Psychological Advisor concurs with the Psychiatric Consultant’s opinion and found he did not have any unfitting mental health condition that would meet criteria for a referral to the Medical Evaluation Board (MEB) for medical discharge processing. There was no evidence he was placed on a duty limiting condition profile for his mental health condition, specifically a permanent S-4 profile for psychiatric conditions, he was never deemed not worldwide qualified due to his mental health condition, and there were no statements from his leadership or mental health provider at any time of his service proclaiming his mental health condition had interfered with his ability to reasonably perform his military duties in accordance with his office, grade, rank,

or rating. Receiving a diagnosis or treatment during service does not automatically render a condition as unfitting. More markers and information are required as delineated, and these markers were absent from his military and service treatment records. He claimed his doctor informed him he could no longer serve and there were no records of this conversation. For awareness since the applicant has received service-connected disability compensation and ratings from the DVA for his mental health condition: The military's Disability Evaluation System, established to maintain a fit and vital fighting force, can by law, under Title 10, U.S.C., 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 "snapshot" 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 law, Title 38, U.S.C., 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 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.

The Psychological Advisor opines liberal consideration is not appropriate to be applied to his request for medical discharge as this policy does not cover this type of request; however, liberal consideration is applied to his request for an upgrade of his discharge due to his contention of a mental health condition. The following are answers to 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 vaguely contends he sustained multiple mental injuries on duty while in the military and did not provide any other clarifying information about his injuries. He did not make a contention for how his mental health condition may excuse or mitigate his discharge. He also contends he was subjected to racist, hateful, and sexual harassment by members of his squadron and did not discuss how these experiences may excuse or mitigate his discharge.

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

Since the applicant did not provide any details about his mental injuries, it is difficult to determine whether these ambiguous injuries had existed or occurred during his military service. His objective service treatment records revealed he had presented to the emergency room on 9 Oct 95 with reports of feeling depressed "over alleged mental torture by wife" and was seen by a psychiatrist on the same day who had documented he was involved in an altercation with his wife and her new boyfriend. He received a diagnosis/condition of marital problems. He had FAP involvement from Oct 95 to Jan 96 for allegations of mutual spousal physical abuse. During his separation physical examination, he endorsed he had frequent trouble sleeping, depression, anxiety, and excessive worry that were defined as secondary to his divorce. The applicant initiated mental health treatment with the DVA in 97, 11 years post-discharge, and had been given diagnoses of Panic Disorder Without Agoraphobia, Adjustment Disorder with Mixed Anxiety and Depressed Mood, Depressive Disorder, Anxiety Disorder NOS, Personality Disorder NOS with narcissistic, borderline, and histrionic features, Alcohol Dependence, Nicotine Dependence, Bipolar I Disorder, Manic with Psychotic Features, and Delusional Disorder over the years by his DVA providers. He

was never diagnosed with any of these conditions during service and had developed or met diagnostic criteria for these conditions' years and decades post-service.

There is no evidence he was sexually harassed during service as he claimed. His DVA records also found no reports of any sexual harassment he endured during service and in fact, he denied a history of emotional and sexual abuse to his DVA providers.

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

There is no evidence the applicant's mental health condition or sexual harassment experience had a direct impact or was a mitigating factor to his discharge. There is evidence he had anxiety and depressive symptoms developed secondary to his marital problems which may explain his improper use of his government credit card but does not excuse this behavior. The majority of his misconduct were not caused by his mental health condition or sexual harassment experience. Therefore, his mental health condition and sexual harassment experience do not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since his mental health condition and sexual harassment experience do not excuse or mitigate his discharge, his condition and experience also do not outweigh his original discharge.

The complete advisory opinion is at Exhibit O.

The AFBCMR Medical Advisor finds insufficient medical evidence to justify the desired change of the record. Specifically, there was no evidence of a physical or mental impairment at the time of applicant's military service that required unresolved or long-term [up to 365 days] restrictions to duty or mobility, nor which posed a decided risk to his health and safety, or welfare of others; nor placed a burden on the military to maintain and protect him. Therefore, referral to the DES and a medical separation was not warranted.

Addressing the applicant's implicit contention he was deprived of a MEB and a medical separation, the military DES, established to maintain a fit and vital fighting force, can by law, under Title 10, U.S.C., 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 progression of injury or disease. Specifically, Department of DoDI 1332.38, *Physical Disability Evaluation*, paragraph E3.P3.2.1, states a Service member shall be considered unfit when the evidence establishes the member, due to physical disability, is unable to reasonably perform the duties of his or her office, grade, rank, or rating (hereafter called duties) to include duties during a remaining period of Reserve obligation. In the case under review, although the applicant was evaluated and treated for acute viral syndromes and low back pain during his military service, the Medical Advisor found no objective evidence to indicate that his back condition(s), or any other medical condition, permanently precluded him from reasonably performing the duties of his office, grade, rank, or rating. Specifically, acknowledging the applicant required physical therapy and was placed on profile restrictions, these were only short-term, 30 days or less, and thus not so severe of as to disqualify him from worldwide duty to the extent or duration that would trigger initiation of MEB processing; as would have been first depicted on an AF Form 422, *Physical*

Profile Serial Report, coded “L4” for a low back condition, or “S4” for a mental health condition, rendering him disqualified for worldwide duty. Moreover, had the applicant been concurrently the subject of a medical separation for his back condition, or physical ailment, and the approved administrative discharge, his case would have required review by the Secretary of the Air Force Personnel Council (SAFPC) to determine the appropriate basis for separation. Noting the nature of the applicant’s infractions, and absent a causal or mitigating relationship between the two personnel actions, the Medical Advisor opines the evidence would support setting aside the medical separation and execution of the approved administrative discharge. On the other hand, operating under a different set of laws, Title 38, Code of Federal Regulations (C.F.R.), with a different purpose, 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, the narrative reason for separation, or length of time since date of separation. This is the reason why an individual can be separated for one reason and yet sometime thereafter receive a compensation rating from the DVA for one or more medical conditions that were determined service-connected but were not proven militarily unfitting or diagnosable at the time of release from military service. The DVA is also empowered to conduct periodic re-evaluations for the purpose of adjusting the disability rating awards (increase or decrease) as the level of impairment from a given service-connected medical condition may vary (improve or worsen, affecting future employability) over the lifetime of the veteran.

Finally, realizing this is not a medical justification, collectively given the applicant’s youth and maturity at the time, the major disappointment he weathered by discovery of his unfaithful spouse upon return from deployment, his post-service achievement of an excellent credit score, attesting to his financial responsibility, and attainment of a Bachelor of Science degree, may warrant consideration of an upgrade of discharge characterization, based upon clemency.

The complete advisory opinion is at Exhibit P.

APPLICANT’S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinions to the applicant on 1 Aug 23 for comment (Exhibit Q) 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 and opinion of the AFRBA Psychological Advisor and the AFBCMR Medical Advisor and finds a preponderance of the evidence does not substantiate the applicant’s contentions. Specifically, the Board does not find any of the applicant’s medical or mental health conditions at the time of his discharge unfitting. The mere existence of a medical/mental health diagnosis does not automatically determine unfitness and eligibility for a medical separation or retirement. The applicant’s military

duties were not severely degraded due to his conditions. A Service member shall be considered unfit when the evidence establishes the member, due to physical or mental health disability, is unable to reasonably perform the duties of his or her office, grade, rank, or rating. The Board took note of the applicant's disability ratings from the DVA but did not find this evidence compelling to warrant relief. A higher rating by the DVA, based on new and/or current exams conducted after discharge from service, does not warrant a change in the member's separation. The military's DES established to maintain a fit and vital fighting force, can by law, under Title 10, U.S.C., 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 which the DVA can offer compensation. Additionally, the Board acknowledges the applicant's contention he was discriminated against and was sexually harassed which contributed to his physical and mental illnesses; however, other than his own assertions, we do not find the evidence presented sufficient to support this claim. Furthermore, the Board applied liberal consideration to the evidence submitted by the applicant; however, it is not sufficient to grant the applicant's request. The applicant did not provide any evidence or records to substantiate his claim that a mental health condition in service caused his misconduct, thus his condition does not mitigate or excuse his discharge. The burden of proof is placed on the applicant to submit evidence to support his claim. In the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; however, given the evidence presented, and in the absence of post-service information and a criminal history report, the Board finds no basis to do so. 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-2002-01800-3 in Executive Session on 25 Oct 23:

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 22 Jan 03.
- Exhibit L: Record of Proceedings, w/ Exhibits F-K, dated 9 Jul 18.
- Exhibit M: Application, DD Form 149, w/atchs, dated 7 Nov 22.
- Exhibit N: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 21 Feb 23

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Exhibit O: Advisory Opinion, AFRBA Psychological Advisor, dated 21 Jun 23.

Exhibit P: Advisory Opinion, AFBCMR Medical Advisor, dated 26 Jul 23.

Exhibit Q: Notification of Advisory, SAF/MRBC to Applicant, dated 1 Aug 23.

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.

3/19/2024

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Board Operations Manager, AFBCMR

Signed by:

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