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

FOURTH ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2002-01953-7

Work-Product

COUNSEL: *Work-Product*

Work-Product

HEARING REQUESTED: NO

APPLICANT'S REQUEST

The Board reconsider her request for a discharge upgrade to general (under honorable conditions) and a change of her narrative reason to "Secretarial Authority."

RESUME OF THE CASE

The applicant is a former Air Force airman basic (E-1) who was discharged on 11 May 94 with a bad conduct discharge due to her court-martial conviction for conspiracy, fraudulent theft, and filing a false incident report.

On 5 Feb 02, the Board considered and denied her request to upgrade her discharge and have her conspiracy charge be listed as a misdemeanor and not a federal crime. The Board found the applicant provided insufficient evidence to justify upgrading her discharge based on clemency noting the seriousness of the offenses. Furthermore, the Board agreed with the recommendation of AFLSA/JAJM, finding the Air Force does not categorize convictions arising from court-martial convictions as misdemeanor or otherwise.

On 24 Nov 09, the Board reconsidered and denied her request for a discharge upgrade; finding insufficient evidence to warrant corrective action. The additional evidence was reviewed, and the Board concluded this evidence did not support her contentions of not being fit for trial and errors or irregularities materially prejudiced her substantial rights.

On 6 Jun 13, the Board reconsidered and denied her request for a discharge upgrade; finding the additional evidence presented by the applicant did not overcome the rationale expressed in the previous decision.

On 27 Oct 16, the Board reconsidered and denied her request for a discharge upgrade; finding the additional evidence presented by the applicant did not overcome the rationale expressed in the previous decision.

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, G, I, and K.

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On 14 Feb 23, the applicant requested reconsideration of her request for a discharge upgrade. She contends through counsel; her paranoid schizophrenia diagnosis sheds new light on her conviction and mitigates the seriousness of the underlying charged misconduct. Because she was not properly diagnosed with paranoid schizophrenia during her military service, her mental health condition was not considered a mitigating factor in determining the ultimate disposition of her military discharge. Her diagnosis of depression while in the service was misdiagnosed, and due to poor judgement attributed to the later-diagnosed schizophrenia, she pled guilty to fraud infractions a week after being released from an inpatient mental facility. Her discharge was inequitable because her mental health conditions, including paranoid schizophrenia, were major contributing factors in her misconduct which led to her discharge. She has a psychiatric condition that existed during service, paranoid schizophrenia, which excuses or mitigates the discharge, as evidenced by her in-service and post-service medical treatment and diagnoses, and this outweighs her misconduct because her mental health condition is extremely rare and affects the way she interprets reality. Before her misconduct, she was an exemplary airman with no other infractions. Following her discharge, she was shunned by her family and was unable to hold a job which led her to live on the streets. She was diagnosed with schizophrenia in 2002 after intervention from a friend who was familiar with treatment for homeless veterans. Due to her mental illness, she is unable to work a 40-hour a week job and is unable to complete her college degree.

In support of her reconsideration request, the applicant submitted the following new evidence: (1) a personal statement; (2) a character reference letter; (3) post-service medical records; (4) a list of medications; (5) FBI Report; (6) her Marriage Certificate and (7) letters from the Department of Veterans Affairs (DVA).

The applicant's complete submission is at Exhibit L.

POST-SERVICE INFORMATION

On 31 Aug 23, the Board sent the applicant a request for post-service information and advised the applicant she was required to provide a Federal Bureau of Investigation (FBI) Identity History Summary Check, which would indicate whether or not she had an arrest record. In the alternative, the applicant could provide proof of employment in which background checks are part of the hiring process (Exhibit M). The applicant provided an FBI report with her application dated 24 Feb 22. According to the report, the applicant was arrested on 22 Aug 09 for two counts of driving under the influence (DUI) of alcohol/drugs. These charges were dismissed; however, she was convicted of reckless driving.

APPLICABLE AUTHORITY/GUIDANCE

This Board is without authority to reverse, set aside, or otherwise expunge a court-martial conviction. Rather, in accordance with Title 10, U.S.C., Section 1552(f), actions by this Board regarding courts-martial are limited to two types: 1) corrections reflecting actions taken by the reviewing officials pursuant to the Uniform Code of Military Justice (UCMJ) (for example, if a convening authority or appellate court took action but that action was not reflected in an Air Force

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record); and 2) action on only the sentence of the court-martial and solely for the purpose of clemency.

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 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 the supplemental guidance, paragraphs 6 and 7.

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On 31 Aug 23, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit M).

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 Air Force.
- 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 assault of a child, sexual abuse of a child, forcible sodomy and attempts to commit these offenses.

AIR FORCE EVALUATION

The AFRBA Psychological Advisor completed a review of all available records and finds insufficient evidence to support the applicant's request for the desired changes to her record. There is insufficient evidence the applicant suffered from schizophrenia or any prodromal symptoms of schizophrenia during her time in the military or at discharge. Furthermore, there is insufficient evidence that demonstrates she was misdiagnosed or had any mental health condition that would mitigate her misconduct.

Her first noted mental health treatment was on 26 Apr 93, which occurred after she committed offenses during Nov and Dec 91 and after she was initially charged with these offenses. She was later charged and convicted in a General Court Martial of conspiracy to commit larceny, steal by fraud, and making a false report on 8 Jun 93. Her mental health record documented her symptoms began after being charged which caused her to become depressed and suicidal. Her hospital records document, at discharge, she had a mental health diagnosis of adjustment disorder. During

her two to three day hospital stay, she was initially diagnosed with major depression and depressive disorder, but her discharge diagnosis was adjustment disorder. One of her hospital notes, dated 28 Apr 93, clearly documents she had been assessed for delusions and hallucinations and was not found to have either symptom. Her hospital records indicate the main focus of treatment was her reaction to the court martial proceedings, substantiating her mental health symptoms arose from a current situational stressor and she was appropriately diagnosed with an adjustment disorder in reaction to her court-martial charges. There is insufficient evidence to suggest she was misdiagnosed. It is noted she did report depression during an emergency care evaluation for a yeast infection and cramping, dated 10 Nov 91.

The applicant alleges the providers who treated her post-service confirmed her schizophrenia had not recently developed and they have concluded the offenses that led to her discharge were directly related to her mental health condition dating back to 1991 in an undated hand-written statement. There is no available evidence to support her statements. There are two submitted documents that do not make the statement her schizophrenia had its onset in 1991 nor do they make any nexus or causal statement her schizophrenia caused her misconduct. Her first noted diagnosis of schizophrenia appears to have been eight years after her military service with no reference to its onset before that time. Her self-authored statement made on 31 Aug 08 in her *Application for the Review of Discharge or Dismissal from the Armed Forces of the United States*, is contradictory to documented court proceedings. On this form, she contends she was diagnosed with delusions, schizophrenia, and anxiety, since 1991 when she was 21 and enlisted in the Air Force. She had delusions on the night she gave her keys to her friend and thought it was a dream. She saw things that were not real when she lived in the dormitory on Work-Product Air Force Base in 1991 and thought it was stress related, so she did not know to seek the advice of a doctor. She did not believe her car was stolen and had visions her car was still there and not missing. She thought peer pressure played an important role in why she saw people that were not there, and she suffered from depression. She thought the whole thing (the vandalizing of her car) was a dream and she just needed to wake up. She was not diagnosed with delusions or schizophrenia at this time in 1991. The events leading up to her court-martial conviction delineate a series of events, that appear to be deliberate, willful, conscious behaviors, that occurred over time, and have no nexus with schizophrenic symptomology, even if she had been diagnosed with schizophrenia. Her misconduct of conspiracy to commit larceny, steal by fraud, and making a false report are not part of the sequela of symptoms associated with her in-service mental health conditions (adjustment disorder, major depression, and depressive disorder). Therefore, her mental health conditions are not a mitigating factor for her misconduct.

Liberal consideration is applied to the applicant's request due to the contention of a mental health condition. The following are responses to the four questions in the policy based on the available records for review:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
The applicant had a final mental health diagnosis after being discharged from her two to three-day psychiatric hospitalization of adjustment disorder. She was previously diagnosed with major depression and depressive disorder.
2. Did the condition exist or experience occur during military service?

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The applicant was diagnosed with schizophrenia approximately eight years after her military service. She was assessed for delusions and hallucinations during her military service and did not exhibit either of these symptoms. The Psychological Advisor thoroughly examined her entire military and medical record and did not find any signs of prodromal symptoms that would indicate early signs of a schizophrenic or thought disorder or that she was misdiagnosed while in the military.

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

The applicant was not diagnosed with delusions or schizophrenia during her time in service or at discharge. The events leading up to her court-martial conviction delineate a series of events, that appear to be deliberate, willful, conscious behaviors, that occurred over time, and have no nexus with schizophrenic symptomology, even if she had been diagnosed with schizophrenia. Again, she was never diagnosed with schizophrenia in service, nor does the Psychological Advisor believe she was mistakenly diagnosed with depression/adjustment disorder. Her misconduct for which she was court-martialed is not part of the sequela of symptoms associated with her in-service mental health conditions (adjustment disorder, major depression, or depressive disorder). Therefore, her mental health conditions are not a mitigating factor for 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 N.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 20 Sep 23 for comment (Exhibit O), and the applicant replied on 11 Oct 23. In her response, the applicant contends, through counsel, the Psychological Advisor failed to consider any of the other mental health issues documented during her time in the service to be prodromal symptoms of schizophrenia. She had documented mental health issues in Nov 91 for depression, May 92 for an attempted suicide by an overdose, in Apr 93 for inpatient care of depression and suicidal ideation, and in Oct 93 for depression and/or excessive anxiety and nervous trouble. Several medical articles are quoted which document the symptoms associated with schizophrenia and the progression of the disease. She disagrees with the opinion there is insufficient evidence to show she suffered from schizophrenia or any prodromal symptoms of schizophrenia during her time in the military or at discharge. Depression is one of the prodromal symptoms of schizophrenia and was noted numerous times from 1991 through 1993 in her military records. While delusions were not found to be present by medical staff during her time in service, she was evaluated for psychosis in the mental facility in 1993. In addition, she has avowed she was suicidal and delusional during this time. The Kurta Memo makes clear the veteran's testimony alone, oral or written, may establish the existence of a condition or experience, that the condition or experience existed during or was aggravated by military service, and that the condition or experience excuses or mitigation the discharge. Because paranoid schizophrenia and depression directly impacted her decision-making and prioritization skills, liberal consideration should be applied to conclude her schizophrenia excused or mitigated her misconduct.

The applicant's complete response is at Exhibit P.

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 concludes the applicant is not the victim of an error or injustice. It appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. Nor was the discharge unduly harsh or disproportionate to the offenses committed. Additionally, 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. Specifically, the Board finds the applicant's diagnosis of adjustment disorder to be the correct diagnosis while she was in the service and finds the preponderance of evidence does not support a diagnosis of schizophrenia while in service. Her mental health symptoms were due to her current situational stressors because of her court-martial proceedings. Liberal consideration was applied to the applicant's request due to the contention of a mental health condition; however, since there is no evidence her mental health condition had a direct impact on her behaviors and misconduct resulting with her discharge, her condition or experience does not excuse, mitigate, or outweigh her discharge. Even if she was diagnosed with schizophrenia while in service, the Board finds her behavior to be willful and deliberate with no nexus to schizophrenic symptomology. In the interest of justice, the Board considered upgrading the discharge based on clemency; however, given the post-service evidence presented, the Board finds no basis to do so. This Board very carefully weighs requests to upgrade the character of a discharge and in doing so, considers whether the impact of an applicant's contributions to his or her community since leaving the service are substantial enough for the Board to conclude they overcame the misconduct that precipitated the discharge and whether an upgrade of the discharge would create a larger injustice to those who served honorably and earned the characterization of service the applicant seeks. While the applicant submitted a personal statement, and FBI report, and a character statement, the Board does not find the documentation sufficient to conclude they should upgrade the applicant's discharge at this time. Therefore, the Board recommends against correcting the applicant's records. The applicant retains the right to request reconsideration of this decision, which could be in the form of a personal statement, additional character statements, or testimonials from community leaders/members specifically describing how her efforts in the community have impacted others. Should the applicant provide documentation pertaining to her post-service accomplishments and activities, this Board would be willing to review the materials for possible reconsideration of her request based on clemency.

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-2002-01953-7 in Executive Session on 20 Dec 23:


-  Panel Chair
-  Panel Member
-  Panel Member

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

- Exhibit E: Record of Proceedings, w/ Exhibits A-D, dated 5 Feb 02.
- Exhibit G: Addendum Record of Proceedings, w/ Exhibit F, dated 24 Nov 09.
- Exhibit I: Second Addendum Record of Proceedings, w/ Exhibit H, dated 6 Jun 13.
- Exhibit K: Third Addendum Record of Proceedings, w/ Exhibit J, dated 27 Oct 16.
- Exhibit L: Application, DD Form 149, w/atchs, dated 14 Feb 23.
- Exhibit M: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 31 Aug 23.
- Exhibit M: Advisory Opinion, AFRBA Psychological Advisor, dated 15 Sep 23.
- Exhibit O: Notification of Advisory, SAF/MRBC to Applicant, dated 20 Sep 23.
- Exhibit P: Applicant's Response, w/atchs, dated 11 Oct 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.

1/8/2024


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Board Operations Manager, AFBCMR
Signed by: USAF