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

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2012-00830-2

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

The Board reconsider his request to upgrade his discharge to honorable.

RESUME OF THE CASE

The applicant is a former Air Force airman basic (E-1).

On 31 Jul 12, the Board considered and denied his request to upgrade his discharge to honorable and change his reentry (RE) code; finding the applicant had provided insufficient evidence of an error or injustice to justify relief. The Board found 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 found no error or injustice in regards to the applicant's RE code. In the interest of justice, the Board considered upgrading the discharge based on clemency; however, found no compelling evidence to grant relief on this basis.

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 F.

On 13 Dec 21, the applicant requested reconsideration of his request for a discharge upgrade. He now contends his Post-Traumatic Stress Disorder (PTSD) could have contributed to his misconduct/discharge and would like consideration for a discharge upgrade under liberal consideration. The Department of Veterans Affairs (DVA) rated him for his service-connected PTSD to which he has been receiving treatment since 2015.

The applicant's complete submission is at Exhibit G.

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

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Controlled by: SAF/MRB
CUI Categories: SP-MIL/SP-PRVCY
Limited Dissemination Control: N/A
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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 the supplemental guidance, paragraphs 6 and 7.

On 21 Jun 22, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit J).

AIR FORCE EVALUATION

The AFRBA Psychological Advisor completed a review of all available records and finds his contention plausible but due to the inconsistent reporting and lack of a compelling explanation for his behaviors affecting his discharge, finds no error or injustice with his discharge from a mental health perspective. The applicant did not specifically identify the traumatic event that caused him to develop PTSD, but his DVA treatment records reported he had been diagnosed with PTSD in Apr 15, several years post-discharge, caused by his Survival, Evasion, Resistance and Escape (SERE) training experience that had occurred in 2006. There were no records specifically stating he had attended SERE training, but his DD Form 214 reported he completed "Combat Survival Training" in Oct 06. SERE training could fall under this category of training and the timeframe matches his report to the DVA. SERE training could be considered a traumatic experience to some individuals and so it is possible he developed PTSD from this experience if his report to the DVA was accurate. His service treatment records were not available for review and his available military records found no documentations of any emotional distress, PTSD symptoms, or PTSD-like behaviors he may have experienced during service affecting his behaviors and discharge. Giving the applicant the benefit of the doubt that it was possible he had or experienced PTSD symptoms during service, it is still difficult to establish a nexus had existed between his mental health condition and misconduct.

The applicant was reported to have engaged in three misconduct causing his discharge consisting of wrongfully appropriating a PlayStation Portable (PSP) without permission, failed to maintain his dormitory room, and stole an XBOX 360 Live Points Card that led to a Summary Court-Martial conviction. The applicant did not offer any explanations for how his mental health condition of PTSD caused any of these behaviors and he also declined to make any statements to his discharge action during service to provide a better understanding of the situation at the snapshot in time of service. The responsibility lies with the applicant to provide the necessary explanation and/or information to corroborate his claims. Even without a clarifying explanation, his condition of PTSD may possibly explain one of his misconduct of failing to maintain his dormitory room as he may have experienced anxiety and depressed mood, possible symptoms of PTSD that may hinder his ability to focus, have energy, etc. to maintain his room. This is speculative as there was no information or evidence to support this notion. For his remaining two misconduct of taking another airman's property without permission and stealing a gift card, these behaviors do not appear to be caused by his mental health condition or residual effects of trauma. These acts could be caused by impulsive or reckless behaviors but does not indicate it was caused by a mental health condition or PTSD. There was no evidence he was experiencing emotional distress or had a mental health condition at the time of his misconduct. Furthermore, the applicant was convicted at Summary Court-Martial and this conviction would indicate the misconduct was severe enough to be processed through legal channels and as such, it would be difficult to overlook, excuse, or mitigate this serious misconduct.

This is the applicant's third overall petition for an upgrade of his discharge. His two prior petitions to the AFDRB and AFBCMR respectively, entailed no contentions of a mental health condition. He had alleged his discharge was too harsh or unjust due to double jeopardy, which are stark contrasts to his current contention for this petition. For this petition, the applicant had contended he was trying to "escape" and again, provided no additional clarifying information. Hypothetically

if he was alluding to escaping the military environment via discharge by misconduct because of possible re-experiencing or being triggered by his traumatic experiences, this argument would be disputed by his previous application to the AFBCMR. In his previous AFBCMR petition, he claimed his discharge and reentry (RE) code was unjust and he was being punished for an incident that was not a crime under the Uniform Code of Military Justice (UCMJ), Article 112(a). He believed he was punished again with a discharge after his court-martial because a discharge was not a possible punishment of the court-martial. He also requested his RE code be upgraded from "2B" and stated his defense attorney said his discharge would be waivable by other branches should he wish to re-enlist. These prior contentions are inconsistent to his current contention. If he was trying to "escape" the military, then he would not have claimed his discharge and RE code was unjust or too harsh, claimed double jeopardy because his discharge was considered as an additional punishment, and requested to upgrade his RE code to allow for possible re-enlistment. His current contention was not supported by his previous actions and reasons. The applicant reported his doctor opined his condition was started during military service and he had received service-connection for PTSD by the DVA. A condition that occurred during service does not automatically cause misconduct or behavioral issues. One could develop a condition during service but does not always result in a discharge. There was no explanation provided for how his condition of PTSD caused a change in his behaviors resulting in his misconduct and court-martial conviction, and subsequent discharge.

As for his service-connection from the DVA for PTSD, the DVA, under Title 38, U.S.C., is empowered to offer compensation or rating 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. Thus, service connection does not indicate a causal or correlated relationship between his behaviors and reason for discharge.

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 contends the DVA rated him as service-connected for PTSD, his doctor had determined his condition began during military service, and he was discharged from the Air Force for a pattern of misconduct as his way to "escape."
2. Did the condition exist or experience occur during military service?
The applicant's service treatment records were unavailable and there are no reports of any observed mental health issues documented by his leadership in his objective military file to support his condition had existed or occurred during military service. He reported to the DVA about six years post-discharge he had developed PTSD symptoms from his SERE training experiences in 2006. There was no specific documentation of SERE training in his military records, but his DD Form 214 reported he completed "Combat Survival Training" in Oct 06, which may include SERE training.
3. Does the condition or experience excuse or mitigate the discharge?

The applicant did not clearly explain how his condition of PTSD caused his behaviors and misconduct leading to his discharge. There was no evidence he had PTSD or any other mental health conditions at the time of his misconduct in his objective military file and only through his DVA records documented several years post-discharge. Giving the applicant the benefit of the doubt that it was possible he had developed PTSD from SERE training, his condition may explain one of his misconduct but does not adequately explain his remaining and more serious misconduct to include a court-martial conviction. Therefore, his mental health condition does not excuse or mitigate his discharge.

4. Does the condition or experience outweigh the discharge?

Since his mental health condition does not excuse or mitigate his discharge, his condition also does not outweigh his 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 22 for comment (Exhibit I), but has received no response.

FINDINGS AND CONCLUSIO

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. 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. Liberal consideration was applied to the applicant's request due to the contention of a mental health condition; however, since there is no evidence his mental health condition or traumatic experiences resulting in PTSD had a direct impact on his more serious behaviors and misconduct resulting with his discharge, his condition or experience does not excuse, mitigate, or outweigh his discharge. 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. The applicant retains the right to request reconsideration of this decision. 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

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The following quorum of the Board, as defined in Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2012-00830-2 in Executive Session on 21 Sep 22:

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 F: Record of Proceedings, w/ Exhibits A-E, dated 31 Jul 12.
- Exhibit G: Application, DD Form 149, dated 31 Dec 21.
- Exhibit H: Advisory Opinion, AFRBA Psychological Advisor, dated 11 May 22.
- Exhibit I: Notification of Advisory, SAF/MRBC to Applicant, dated 12 May 22.
- Exhibit J: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 21 Jun 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.11.9.

5/18/2023

Work-Product

Board Operations Manager, AFBCMR
Signed by: USAF